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CITY OF RIALTO and
RIALTO UTILITY AUTHORITY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EDCV09-7501 CBM (DTBx)

CITY OF RIALTO, a California Municipal corporation; RIALTO UTILITY AUTHORITY, a Joint Powers Authority organized and existing under the laws of the State of California,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF DEFENSE; KWIKSET LOCKS, INC.; EMHART INDUSTRIES, INC.; BLACK & DECKER INC.; PYROTRONICS CORPORATION; COUNTY OF SAN BERNARDINO; ROBERTSON'S READY MIX, INC.; BROCO ENVIRONMENTAL, INC.; DENOVA ENVIRONMENTAL, INC.; ENVIRONMENTAL ENTERPRISES, INC.; AMERICAN PROMOTIONAL EVENTS, INC.-WEST; PYRO SPECTACULARS, INC.; TROJAN FIREWORKS; ASTRO PYROTECHNICS; ZAMBELLI

Case No.

COMPLAINT FOR:

1. RECOVERY OF RESPONSE COSTS PURSUANT TO CERCLA (42 U.S.C. § 9607(a));

2. DECLARATORY RELIEF RE: FUTURE RESPONSE COSTS PURSUANT TO CERCLA (42 U.S.C. § 9613(g));

3. RECOVERY OF RESPONSE COSTS PURSUANT TO HSAA (Cal. Health & Safety Code, § 25300, *et seq.*; § 25363(e));

4. DECLARATORY RELIEF PURSUANT TO HSAA (Cal. Health & Safety Code, § 25300, *et seq.*, § 25363);

FIREWORKS MANUFACTURING CO.; RAYTHEON COMPANY; GENERAL DYNAMICS CORPORATION; HUGHES AIRCRAFT COMPANY; TUNG CHUN COMPANY; WONG CHUNG MING, aka CHUNG MING WONG; WHITTAKER CORPORATION; DELTA T. INC.; AMERICAN WEST EXPLOSIVES; GOLDEN STATE EXPLOSIVES; E.T.I. EXPLOSIVE TECHNOLOGIES INTERNATIONAL, INC. OF CALIFORNIA; EDWARD STOUT; EDWARD STOUT AS THE TRUSTEE OF THE STOUT-RODRIGUEZ TRUST, aka THE SCHULZ FAMILY TRUST; ELIZABETH RODRIGUEZ; JOHN CALLAGY AS TRUSTEE OF THE FREDERIKSEN CHILDREN'S TRUST UNDER TRUST AGREEMENT DATED FEBRUARY 20, 1985; LINDA FREDERIKSEN AS TRUSTEE OF THE E.F. SHULZ TRUST; JOHN CALLAGY AS TRUSTEE OF THE E.F. SCHULZ TRUST; LINDA FREDERIKSEN; LINDA FREDERIKSEN AS TRUSTEE OF THE WALTER M. POINTON TRUST DATED 11/19/91; LINDA FREDERIKSEN AS TRUSTEE OF THE MICHELLE ANN POINTON TRUST UNDER TRUST AGREEMENT DATED FEBRUARY 15, 1985; JOHN CALLAGY; MARY MITCHELL; JEANINE ELZIE; STEPHEN CALLAGY; MICHELLE ANN POINTON; ANTHONY RODRIGUEZ; ENSIGN-BICKFORD COMPANY; ORDNANCE ASSOCIATES; THOMAS O. PETERS; THOMAS O. PETERS REVOCABLE TRUST; HARRY HESCOX; FRED SKOVGARD; MILDRED WILKINS; KEN THOMPSON, INC.; RIALTO CONCRETE PRODUCTS,

Defendants.

5. INJUNCTIVE RELIEF PURSUANT TO RCRA (42 U.S.C. § 6901, *et seq.*) (BY PLAINTIFF CITY OF RIALTO ONLY);

6. NUISANCE;

7. PUBLIC NUISANCE;

8. NEGLIGENCE;

9. CONTINUING TRESPASS TO LAND;

10. INVERSE CONDEMNATION;

11. DECLARATORY RELIEF PURSUANT TO THE DECLARATORY JUDGMENT ACT (28 U.S.C. §§ 2201, 2202);

12. DECLARATORY RELIEF UNDER STATE LAW (CAL. CODE CIV. PROC., § 1060)

DEMAND FOR JURY TRIAL (FRCP 38)

GENERAL ALLEGATIONS

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of Plaintiffs claims for relief, and all other controversies arising herein under Chapter 103 of Title 42 of the United States Code, pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. §§ 9601-9657, § 9107(a), and pursuant to 28 U.S.C. § 1331 as involving questions arising under federal law. Departments, agencies and instrumentalities of the United States are liable under CERCLA pursuant to an express statutory waiver of sovereign immunity. (42 U.S.C. § 9620(a).) This Court also has subject matter jurisdiction under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201.

2. This Court has jurisdiction over the subject matter of Plaintiff CITY OF RIALTO's claims for relief asserting a citizens' suit claim pursuant to Sections 7002(a)(l)(A) and 7002(a)(l)(B) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as further amended by the Hazardous and Solid Waste Amendments of 1984 ("RCRA"), 42 U.S.C. §§ 6901-6992(k), § 6972(a)(l)(A), (a)(l)(B), pursuant to the provisions of RCRA § 7002(a), 42 U.S.C. § 6972(a), and pursuant to 28 U.S.C. § 1331 as involving questions arising under federal law. Departments, agencies and instrumentalities of the United States are liable under RCRA pursuant to an express statutory waiver of sovereign immunity. (42 U.S.C. § 6961(a).)

3. This Court has subject matter jurisdiction over Plaintiffs' remaining claims for relief brought under state law by virtue of its statutorily-provided supplemental jurisdiction, 28 U.S.C. § 367, and under the doctrine of pendent jurisdiction set forth in *United Mine Workers v. Gibbs*, 383 U.S. 715, 86 S. Ct. 1130, 16 L.Ed. 218 (1966). The claims under state law arise from the same common nucleus of operative facts as the claims under federal law. The state law

and federal law claims are so intertwined that it is appropriate for this Court to exercise its jurisdiction over the state law claims asserted herein.

4. Plaintiff has satisfied all the jurisdictional requirements to filing this Complaint ("Complaint"). While unnecessary to pursue its federal cost recovery and declaratory relief claims under CERCLA, Plaintiff has, at least 90 days prior to filing of this Complaint, given all necessary notices required by the appropriate citizens suit provisions of RCRA (42 U.S.C. § 6972(b)(1)(2)(A)) to the parties named herein. Plaintiff served a new public entity tort claim on defendant COUNTY OF SAN BERNARDINO on or about July 20, 2004, and that new claim was denied by operation of law on or about September 7, 2005, when COUNTY failed to act upon it. As against COUNTY, the Fourth, Fifth, Seventh, Eighth, Ninth, Tenth and Twelfth Claims for Relief of this Complaint are all supported by this new notice, which is timely in light of the continuing and repeated course of conduct and omissions causing damages to Plaintiff that are continuing and have not yet stabilized, and for which the relevant claims have not yet accrued pursuant to the stabilization rule of accrual under the doctrine of *Lee v. Los Angeles County Metropolitan Transportation Authority,* 107 Cal.App.4th 848, 858 (2003).

5. Since the properties and natural groundwater resources that are the subject of this action are located in the City of Rialto, San Bernardino County, California, within this Court's District, since the alleged imminent and substantial endangerment has occurred at said properties, and since the release of hazardous substances into the environment and related wrongful acts alleged herein took place at said properties, and has injured and affected said properties and resources, venue of law is proper in this Court pursuant to 42 U.S.C. § 9607(a), 42 U.S.C. § 6972(a), 42 U.S.C. § 9659(b), 28 U.S.C. § 1391(b), and all applicable law.

NATURE OF ACTION

6. Plaintiffs CITY OF RIALTO and RIALTO UTILITY AUTHORITY (hereinafter sometimes collectively and/or individually referred to as "Plaintiff' or

"CITY") bring this action to: (1) require certain Defendants to investigate and clean up the environmental contamination caused or contributed to by Defendants which has migrated and continues to migrate from numerous industrial, commercial, former military and waste disposal sites and facilities within the approximately 2800-acre North Rialto area formerly known as the Rialto Ammunition Storage Point (the "RASP Area" or "RASP Site") upon which Defendant UNITED STATES DEPARTMENT OF DEFENSE (the "DOD") conducted military operations and activities from approximately December 1941 through July 1946; and (2) recover CITY's costs, expenses, losses and other damages caused by Defendants from the environmental contamination which has been released and continues to be released into the environment, and which has migrated and continues to migrate from their facilities and sites within the RASP Area in North Rialto. The claims alleged herein relate back to the date of January 21, 2004 pursuant to Section 1 of a Memorandum of Understanding between the parties entered into in June 2008, as amended, which was the date of filing of that certain action No. ED CV 04-79(SSx) filed by CITY in the U.S. District Court for the Central District of California.

7. Plaintiff CITY OF RIALTO is a municipal corporation, with a population of approximately 95,000 persons, duly organized and existing under the laws of the State of California and located in San Bernardino County, California. Plaintiff RIALTO UTILITY AUTHORITY is a Joint Powers Authority duly organized and existing under the laws of the State of California. CITY's public works agency is responsible for supplying a safe, potable and reliable drinking water source to approximately 10,000 service connections, representing just under half of CITY's population. CITY possesses valuable adjudicated and unadjudicated proprietary water rights to draw water from, and valuable rights to, inter alia, recharge and store water in, one or more contaminated local aquifers, including but not necessarily limited to, an aquifer/s within the Rialto/Colton

Groundwater Basin. CITY is the successor to certain mutual water companies and other water service providers that initiated pumping from local aquifers in the late 1800's. Today, CITY relies almost entirely on local aquifers to meet its needs for water. CITY holds valuable proprietary water rights in these aquifers, one or more of which have been contaminated by perchlorate. CITY holds these proprietary water rights both in its own name and as an owner of shares in certain mutual water companies. The CITY OF RIALTO, in its own name and as an owner of shares in mutual water companies, is also a holder of water rights under decrees, judgments and other court proceedings (collectively, "Adjudications"). The Adjudications govern the management of and production from aquifers from which CITY (and others) draw water. The Adjudications give CITY additional valuable proprietary rights in the one or more aquifers that have been contaminated by perchlorate.

8. Perchlorate, a chemical whose molecules are comprised of one chlorine and four oxygen atoms, is principally used to accelerate the combustion of rocket fuels and propellants and for the manufacture of explosives, munitions, flares, ordnance, and pyrotechnic products, such as fireworks. Due to its ignitability and/or other characteristics as an oxidizing agent, perchlorate that is disposed of, discharged or released into the environment is a "hazardous solid waste" within the definitions of both RCRA and CERCLA. (42 U.S.C. §§ 6903(5), (27), 9601(14)(c); 40 C.F.R. §§ 261.2, 261.3(a)(2)(i), 261.20(a); *Castaic Lake Water Agency v. Whittaker Corp.*, 272 F.Supp.2d 1053, 1059-1060 (C.D. Cal., July 15, 2003).) The U.S. EPA has determined that perchlorate causes adverse human health effects, including inhibition of iodine uptake to the thyroid gland, producing adverse physical and developmental problems, particularly in pregnant women and their developing fetuses, and including behavioral changes and mental retardation in children. Perchlorate is a salt which dissolves readily in water, spreads rapidly with the water through permeable and semi-permeable soils

down through the unsaturated zone and into groundwater, and requires expensive remediation technologies to remove from water or to reduce to levels below governmentally-established limits, such as action levels, public health goals ("PHGs"), or maximum contaminant levels ("MCLs").

9. The scientific technology required to test for and detect concentrations of perchlorate at or below low ppb levels did not exist prior to late 1997. At the time of filing of CITY's original complaint, the California State Notification Level (an advisory standard) for perchlorate in drinking water was four (4) parts per billion ("ppb"), as set by the California Department of Health Services ("DHS"), having been lowered from the previous level of 18 ppb on January 18, 2002. This California law required water providers to notify their governing bodies when perchlorate concentrations in their water supply equaled or exceeded the 4 ppb benchmark. Since the filing of CITY's original complaint, on or about March 12, 2004, the Office of Environmental Health Hazard Assessment ("OEHHA") of the California Environmental Protection Agency issued a Public Health Goal for Perchlorate in Drinking Water ("PHG") of 6 ppb. Also, on or about that date, the DHS revised its California State Notification Level to 6 ppb. The California Department of Health Services has adopted a MCL of 6 ppb, effective October 18, 2007.

10. Perchlorate has been detected in seven of CITY's drinking water supply wells, five of which are located in and/or which draw from the contaminated Rialto-Colton Groundwater Basin at levels ranging from about 1.7 to 300 ppb. Non-production, test wells within the Basin have contamination levels of up to 10,000 ppb. Upon detection of perchlorate, CITY took its contaminated production wells out of service. Disabling contaminated wells has resulted in temporal total potable water losses to CITY of approximately 10,000 gallons per minute, or over 14 million gallons per day. CITY anticipates that the perchlorate contamination will spread to other wells drawing from the contaminated aquifer/s

in the immediate future if the existing perchlorate contamination plume, currently estimated to span over 6.5 miles from its origins in the RASP Area, continues to migrate as anticipated. On July 15, 2003, the Rialto City Council declared a water shortage emergency under California Water Code §§ 350, *et seq.*, because of the effects of the perchlorate contamination and the local drought. On July 6, 2004, the California Regional Water Quality Control Board - Santa Ana Region ("RWQCB"), acting pursuant to its Cleanup and Abatement Order ("CAO") No. R8-2003-0013, notified defendant COUNTY OF SAN BERNARDINO ("COUNTY") that Rialto Well No. 3 is currently threatened to be "impacted by perchlorate that is migrating from the County's [RASP Area] Rialto property." Loss of additional wells could result in CITY being unable to meet its citizens' demand for potable water.

11. CITY has installed treatment equipment and resumed pumping water from some wells in which the perchlorate has been detected, and CITY has also terminated or curtailed the use of some wells as a result of the contamination and attempts to mitigate it. CITY and these purveyors are now treating at the well head on such recommissioned wells to remove perchlorate from water taken from the perchlorate-polluted aquifer/s so that it can be served to their customers. Treatment equipment is installed and operating in the RIALTO's Chino Well #2. Treatment equipment in Chino Well #1 is operational and is undergoing the requisite demonstration phase testing prior to delivering water to RIALTO's system. Several other CITY wells remain shut down and fully or intermittently inoperable due to the perchlorate pollution and cannot be equipped with perchlorate removal equipment until funds to do so are obtained. The cost per well for well-head treatment for perchlorate removal in terms of capital and operation and maintenance expenses is very substantial and there is an approximate 6-month lead time between ordering the equipment and obtaining necessary Department of Health Services approval. CITY has been forced to significantly raise the rates

charged to its water consumers to cover damages and costs incurred as a result of the perchlorate contamination.

12. To date, CITY has spent in excess of $18,000,000, as a result of perchlorate contamination in one or more contaminated aquifers. These monies have been spent in conducting investigations, identifying processes by which perchlorate can be removed from the drinking water, and performing well head treatments. Preliminary efforts, analysis, and characterization strongly suggest that the groundwater in the contaminated aquifer/s flows generally in a northwest-to-southeast direction, paralleling the Rialto/Colton Fault, and that a perchlorate contaminant plume originating in the RASP Area is also moving in that general direction. The perchlorate and TCE in the soil and groundwater at, under, and emanating from, the RASP Area sites poses an imminent and substantial threat to public health and the environment.

13. The groundwater contamination beneath and affecting CITY's wells and properties, and its proprietary and other property rights and interests in the formerly pristine but now contaminated aquifer/s and its/their natural groundwater resources, is attributable, in whole or in part, to the Defendants' historical, current and ongoing releases and disposal of significant quantities of hazardous substances and wastes, including perchlorate, at various sites and facilities within the RASP Area, including, but not limited to, Defendant COUNTY's Mid-Valley Sanitary Landfill. Over time, some of the released and disposed hazardous substances and wastes has moved vertically downward into and through the RASP Area soils to contaminate the underlying groundwater, and has subsequently flowed into, beneath and onto CITY's properties and wells, causing water contamination and well closure, and necessitating the employment of expensive treatment and remediation technologies, inter alia.

14. The Defendants' activities described herein have resulted in discharges and releases of hazardous substances, including perchlorate, into the

Rialto-Colton Groundwater Basin and those discharges and releases of hazardous substances have produced a contamination plume extending to the City of Colton that is affecting Colton's water rights and drinking water wells. City believes any remediation activity should be designed to remediate the entire Rialto-Colton Groundwater Basin.

15. CITY's response actions to the discovery of perchlorate contamination were taken to minimize damage to public health and the environment. The detection of perchlorate in the Rialto-Colton Groundwater Basin created an immediate and emergency threat to public health and safety. CITY has obtained and considered the available data regarding the impacts of perchlorate on humans, even in low doses, and acted to address the scientific community's reports about the threat posed by serving even low doses of perchlorate. In the interest of an expeditious cleanup and acting in good faith to remove the environmental contamination caused by perchlorate and TCE, CITY undertook response actions, including, but not limited to, the following:

(a) CITY conducted a preliminary assessment to identify the source and nature of the release of perchlorate and TCE.

(b) CITY has made two declarations of water supply emergency caused by the perchlorate and TCE contamination. CITY has also initiated a water conservation program.

(c) As part of its community involvement plan, CITY has consistently invited public comment when considering its alternatives to respond to the contamination. CITY has made available to the public, and will continue to make available, all of the documents related to its substantial compliance with the National Contingency Plan ("NCP"). Copies of this administrative record available for public review are maintained at the Rialto Public Library and City Clerk's office. The administrative record is also available online. A community

relations coordinator has been appointed, and responds to citizens' inquiries regarding perchlorate.

(d) CITY has thoroughly investigated removal alternatives, including cost, functionality, and feasibility. The selection of treatment implemented on Chino Well #1 and Well #2 was discussed by the Rialto City Council at a regularly scheduled meeting.

(e) In addition to a number of public meetings held by the City Council, and jointly with the Rialto School District and RWQCB, numerous "town hall" meetings have been held to offer the public additional opportunities to offer comment on the investigation of the contamination and the consideration of response activities.

(f) CITY has provided notice to the RWQCB and EPA of the perchlorate and TCE problems. CITY is working with these agencies, including providing factual information, data, and comments, to consider the necessary scope of investigation and eventual remediation of the Rialto-Colton Basin.

(g) CITY has considered state laws and regulations in protecting the public health and its obligation to maintain an adequate supply of safe, potable water.

(h) CITY has obtained all necessary permits for response activities, including the wellhead treatment as described above.

(i) CITY has incurred response costs in investigating the contamination and in implementing responsive measures to temporarily address the contamination and allow the city to provide clean water to its ratepayers. CITY has maintained documents to support each response action and verify all associated costs. These actions and the costs incurred in taking them are consistent and in substantial compliance with the NCP.

DEFINITIONS

16. "Perchlorate," as used in this Complaint, is an oxidizing anion which is both a "hazardous substance" and "hazardous solid waste" as defined under CERCLA and RCRA. (42 U.S.C. §§ 6903(5), (27), 9601(14)(c); 40 C.F.R. §§ 261.2, 261.3(a)(2)(i), 261.20(a); *Castaic Lake Water Agency v. Whittaker Corp.*, 272 F.Supp.2d 1053,1059-1060 (C.D. Ca., July 15, 2003).)

17. "Disposal," as used in this Complaint, shall have the meaning set forth in RCRA § 1004(3), 42 U.S.C. § 6903(3):

> The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

18. "Environment," as used in this Complaint, shall have the meaning set forth in CERCLA § 101(8), 42 U.S.C. § 9601(8):

> (A) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States ... and (B) any other surface water, groundwater, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

19. "Facility," as used in this Complaint, shall have the meaning set forth in CERCLA § 101(9), 42 U.S.C. § 9601(9):

> (A) Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or

area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located…

20. "Hazardous waste," as used in this Complaint, shall have the meaning set forth in RCRA § 1004(5) and its implementing regulations:

> …a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical or infectious characteristics may –
>
> (A) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or
>
> (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. (42 U.S.C. § 6903(5).)

"'Characteristic' hazardous wastes are those wastes that are ignitable, corrosive, reactive, or toxic, as those terms are defined in 40 C.F.R. §§ 261.21-261.24. See § 261.3(a)(2)(i) and 261.20(a)." (*Castaic Lake Water Agency v. Whittaker Corp., supra,* 272 F.Supp.2d 1053, 1059-1060.)

21. "Hazardous substance," as used in this Complaint shall have the meaning set forth in 42 U.S.C. § 9601(14):

> The term "hazardous substance" means (A) any substance designated pursuant to Section 1321(b)(2)(A) of Title 33, (B) any element, compound, mixture, solution, or substance designated pursuant to Section 9602 of this title, (C) any hazardous waste having the characteristics identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act [42 U.S.C.A. § 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C.A. §§ 6901, *et seq.*] has been suspended by Act of

> Congress), (D) any toxic pollutant listed under Section 1317(a) of Title 33, (E) any hazardous air pollutant listed under Section 112 of the Clean Air Act [42 U.S.C.A. § 7412], and (F) any imminently hazardous chemical substance or mixture with respect to which the [EPA] has taken action pursuant to Section 2606 of Title 15.

22. "National Contingency Plan" ("NCP"), as used in this Complaint, means the National Oil and Hazardous Substance Pollution Contingency Plan as set forth at 40 CFR Part 300, which is the Congressionally-mandated plan developed by the U.S. EPA that delineates the required procedures for investigating, analyzing remedial alternatives, responding to and abating the adverse affects of releases of hazardous substances into the environment.

23. "Release," as used in this Complaint, shall have the meaning set forth in CERCLA § 101(22), 42 U.S.C. § 9601(22):

> …any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutants or contaminant)…

24. "Response costs," as used in this Complaint, means the cost of "removal" of and "remedial action" with respect to hazardous substances, as those terms are defined in CERCLA § 101(23) and (24), 42 U.S.C. § 9601(23) and (24), and all other costs necessary to respond to releases of hazardous substances, as defined in CERCLA § 101(25), 42 U.S.C. § 9601 (25), and all applicable law. Such costs include, but are not limited to, costs incurred to investigate, monitor, assess and evaluate the hazardous substances release, as well as costs of removal and disposal of the hazardous substance. Such costs also include those incurred in actions to remedy permanently the hazardous substance release, including, but not limited to, (1) the storage, confinement, and cleanup of hazardous substances, and

(2) any other such action necessary to protect public health, welfare, and the environment. "Response and remediation costs under CERCLA" include, but are not limited to, the following items of damages sought by Plaintiff: costs incurred in investigation and monitoring of the nuisance and trespass conditions affecting CITY's wells and water supply; costs of remediation and treatment of extracted drinking water, including well-head treatment, and costs of replacement water necessary to protect the health and safety of CITY's citizens and its water supply; rate increases and other measures needed to mitigate impacts of the contamination (including reduction of CITY's potable water supply); and costs of increased maintenance and operation (for both contaminated and non-contaminated wells). 7/12/04 Order at pp. 12-13. The term "response costs" also means any costs and attorneys' fees including, but not limited to, the attorneys' fees and costs associated with investigating and locating the parties responsible for the investigation and clean up of the environmental contamination alleged herein.

25. "Solid waste," as used in this Complaint, shall have the meaning set forth in RCRA § 1004(27), 42 U.S.C. § 6903(27):

> ...any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage...

OPERATIONS IN THE RIALTO-COLTON BASIN

26. Plaintiffs CITY OF RIALTO and RIALTO UTILITY AUTHORITY ("RUA") (collectively "Plaintiff" or "CITY") are, respectively, (1) a California municipal corporation, general law city, and a public water agency duly organized and existing under the laws of the State of California, and (2) a Joint Powers Authority duly organized and existing under the laws of the State of California. By

May 1, 2001, Lease and Management Agreements, CITY OF RIALTO is the owner, lessor and operator of CITY's water system, the RUA has appointed CITY OF RIALTO as its agent to carry out all aspects of the operation and maintenance of the water system, and CITY OF RIALTO has assumed all rights, liabilities, duties and responsibilities of the RUA regarding operation and management of the system and administration and enforcement of all relevant contracts and other agreements. Without limitation as to the nature and scope of Plaintiff CITY's affected property rights and interests, CITY owns, leases and operates certain real property and drinking water supply wells that draw from, recharges and stores waters in, and has valuable adjudicated and unadjudicated proprietary and other interests in the natural groundwater resources of one or more contaminated aquifers, as discussed in more detail above, and these valuable property rights and interests, inter alia, have been and/or are being destroyed, damaged, injured and/or adversely affected by the contamination that is the subject of this action.

27. Plaintiff CITY is informed and believes, and based thereon alleges, that Defendant UNITED STATES DEPARTMENT OF DEFENSE, formerly known as the War Assets Administration ("DOD"), is, and at relevant times was, an Executive Branch agency of the United States Government, headed by the Secretary of Defense, and encompassing as Military Departments within it all branches of the United States Military Forces, including the U.S. Army, U.S. Navy, U.S. Air Force, U.S. Marine Corps and U.S. Coast Guard. Plaintiff is informed and believes, and based thereon alleges, that the DOD, including the War Assets Administration, and/or its predecessor and constituent Military Departments, owned and operated a facility or facilities in the RASP Area from approximately 1941 to 1946, including storage bunkers (later sold and/or leased to defense contractors and/or manufacturers and others using, handling, processing, storing and/or disposing of perchlorate and perchlorate-containing products, materials and wastes), railroad spurs, chemical weapons, explosives, munitions,

pyrotechnics, propellants, hot waste, discarded materials, and ordnance shipping, testing, storage, and/or handling, military and target range operations, powder and fuse magazines, and burning and on-site disposal and destruction operations, which resulted in the disposal, discharge and release of perchlorate-containing products, hazardous substances and hazardous wastes into the environment. Plaintiff is informed and believes, and based thereon alleges that during DOD's operations at the RASP Site over 3.5 million tons of ammunition and explosives were shipped to and handled at that site. Plaintiff is informed and believes, and based thereon alleges, that inter alia, Defendant DOD destroyed and disposed of defective freight-damaged and/or obsolete perchlorate-containing products at the RASP Site, and also disposed of and/or arranged for disposal of perchlorate-containing and hazardous substances/wastes at other facilities within the RASP Area, both during and after its occupancy thereof, through, inter alia, supervision, direction, control and/or oversight of its contractors and subcontractors including, but not limited to, GOODRICH, EMHART, WHITTAKER, ORDNANCE ASSOCIATES and BROCO ENVIRONMENTAL, INC. resulting in releases and discharges of perchlorate and hazardous substances/wastes into the environment as a result of these activities. Plaintiff is informed and believes, and based thereon alleges, that Defendant DOD further released and discharged perchlorate and hazardous substances and wastes into the environment through releases into and from its then-on-site septic system, open sludge bed, and from accidental releases including, but not limited to, releases from fires occurring in the bunker storage area. Plaintiff is informed and believes, and based thereon alleges, that the DOD's on site storage bunkers continued to exist following its use and sale of the RASP Area. Plaintiff is informed and believes, and based thereon alleges that, following various mesne leases and conveyances involving various Defendants' ownership, occupation and use of such bunkers over a period of approximately 50 years, during which period DOD may also have in some capacity supervised and/or

exercised control over some of said production processes and activities, the bunkers were ultimately acquired, razed and used as fill dirt/material by Defendant COUNTY as set forth in more detail below.

28. Plaintiff is informed and believes, and based thereon alleges, that WEST COAST LOADING CORPORATION ("WCLC") at relevant times was a California corporation, prior to its acquisition by and merger into KWIKSET LOCKS, INC., AMERICAN HARDWARE CORPORATION, EMHART INDUSTRIES, INC., and BLACK & DECKER INC. Plaintiff is informed and believes, and based thereon alleges, that WCLC was a DOD contractor that owned and operated an approximately 160-acre facility, and that also leased and operated separate facilities located within the RASP Area, between approximately 1952 and 1957. Plaintiff is informed and believes, and based thereon alleges, that WCLC's operations at the site, for which its corporate successors-in-interest are also liable, included the design, manufacture, loading, assembly and testing of perchlorate-containing products, including photoflash cartridges, detonators, simulators, fuses, illuminating mortar shells, and Loki and HASP rockets, the preparation, handling, storage, drying, grating, and processing of tons of raw perchlorate for these products and for off-site shipment to other manufacturers, and the disposal and burning of perchlorate-containing wastes and products and hazardous wastes and substances in, inter alia, unlined dirt trenches, incinerators and a then-on-site drainage and septic system, and that these activities, as well as numerous on-site "flashes," fires, explosions and accidents resulting in the incomplete combustion and disposal, discharge, release and dispersal of perchlorate-containing product and hazardous substances and wastes, resulted in releases of perchlorate and hazardous substances and wastes into the soils and groundwater on, under and around the said 160-acre site and facilities. Plaintiff is informed and believes, and based thereon alleges, that WCLC also arranged to have perchlorate-contaminated and hazardous substances/wastes disposed of at the Mid-Valley Sanitary Landfill

and/or with other waste handlers and processors doing business at and around the RASP Site at relevant times.

29. Plaintiff is informed and believes, and based thereon alleges, that Defendant KWIKSET LOCKS, INC. ("KLI") was at relevant times until its dissolution a California corporation, and was the corporate successor, by, inter alia, acquisition and assumption of liabilities and/or de facto merger in or about 1957-1958, to, and responsible for all relevant liabilities of, defendant WCLC, as alleged hereinabove. Plaintiff is informed and believes and based thereon alleges, that Defendant KLI for a period of time held title to the property and also engaged in the same activities at the 160-acre site as alleged hereinabove as to WCLC prior to its sale of the site and plant following the merger with WCLC.

30. Plaintiff is informed and believes, and based thereon alleges, that AMERICAN HARDWARE CORPORATION ("AHC") is, and/or at relevant times was, a Connecticut Corporation with its principal place of business in Connecticut. Plaintiff is informed and believes, and based thereon alleges, that all of the shares of KLI were purchased by AHC on or before July 3, 1957, and that KLI became a wholly owned and controlled subsidiary of AHC. Plaintiff is informed and believes, and based thereon alleges, that in or about June, 1958, KLI distributed its assets and its outstanding debts and obligations to AHC. AHC assumed all known and unknown liabilities of KLI, contingent or otherwise, on or before the dissolution of KLI by the Board of Directors of AHC in or about July 1958. Plaintiff is informed and believes, and based thereon alleges, that AHC is and/or was the corporate successor, by, inter alia, acquisition and assumption of all liabilities, including contingent unknown liabilities of KLI, merger and/or de facto merger, to, and responsible for all relevant liabilities of, WCLC and KLI, all as alleged above. AHC subsequently changed its name to Emhart Corporation, and then to EMHART INDUSTRIES, INC., which is a defendant in this action and is responsible for the liabilities of AHC.

31. Plaintiff is informed and believes, and based thereon alleges, that Defendant EMHART INDUSTRIES, INC. ("EMHART") is and/or at relevant times was a Connecticut corporation, formerly known as AHC prior to about mid-1964, and as Emhart Corporation from approximately 1964-1976. Plaintiff is informed and believes, and based thereon alleges, that EMHART is the corporate successor, by, inter alia, acquisition and assumption of liabilities including contingent unknown liabilities of KLI and WCLC, and/or de facto merger, to, and responsible for all relevant liabilities of, WCLC, KLI and AHC, as alleged above.

32. Plaintiff is informed and believes, and based thereon alleges, that on or about February 28, 2002, under Defendant EMHART's Plan of Reorganization, Defendant BLACK & DECKER INC. ("BDI") a Delaware Corporation, became EMHART'S sole shareholder, and the holder of all assets of Defendant EMHART, including, but not limited to, all of EMHART'S interests, shares and equity notes. Plaintiff is further informed and believes, and based thereon alleges, that BDI was and is the corporate successor and responsible for all relevant liability of, Defendants EMHART, and of AHC, KLI, and WCLC.

33. Plaintiff is informed and believes, and based thereon alleges, that GOODRICH CORPORATION, doing business in California as THE NEW YORK GOODRICH CORPORATION ("GOODRICH") is, and at relevant times was, a New York Corporation with its principal place of business in North Carolina. Plaintiff is informed and believes, and based thereon alleges, that GOODRICH was a DOD contractor that owned and operated an approximately 160-acre facility - the same facility previously owned, operated and contaminated by WCLC - and that GOODRICH also owned and/or leased and operated separate facilities located within the RASP Area, between approximately 1957 and approximately 1966. Plaintiff is informed and believes that GOODRICH's operations at its facilities within the RASP Area included experimentation with and the formulation of perchlorate-based propellants, and the design, manufacture, loading, assembly and

testing of perchlorate-containing products, including, but not limited to, test rockets, sounding rockets, Sidewinder missiles and/or rockets, Loki rockets, Loki II rockets, HASP rockets, ASP rockets and WASP rockets. Plaintiff is informed and believes that GOODRICH's operations involved the preparation, handling, storage, weighing, mixing, drying, grating and processing of tons of raw perchlorate for the propellants and products it designed, manufactured and tested at its facilities, and the disposal and burning of perchlorate-containing wastes and products and hazardous substances/wastes in and/or on, inter alia, the bare ground, unlined dirt trenches, incinerators and a then-on-site drainage and septic system. Plaintiff is informed and believes, and based thereon alleges, that these activities, as well as on site rocket testing, "flashes," fires, explosions and accidents which resulted in the incomplete combustion and disposal, discharge, release and dispersal of perchlorate-containing products and hazardous substances and wastes, resulted in releases of the same into the environment, including the soils and groundwater in, on, under and around the GOODRICH facilities. Plaintiff is informed and believes that GOODRICH also arranged to have perchlorate-contaminated and hazardous substances/wastes disposed of at the Mid-Valley Sanitary Landfill and/or with other waste handlers and processors doing business at and around the RASP Site at relevant times. GOODRICH claims a credit of $100,000 for funds paid toward CITY's development of a database on perchlorate, TCE, and the Rialto-Colton Basin, and up to $4,000,000 for funds paid to COLTON, CITY, West Valley Water District and Fontana Water Company as a set-off against any allocation or judgment pursuant to the terms of an Interim Settlement Agreement dated December 31, 2002, and for this reason CITY has not named GOODRICH in the claims for response costs, damages, and relief in the First, Second, Third, Fourth, Sixth, Seventh, Eighth, Ninth, Eleventh, and Twelfth claims hereof.

34. Plaintiff is informed and believes, and based thereon alleges, that Defendant PYROTRONICS CORPORATION ("PYROTRONICS") was at relevant times a California corporation, and that it filed Chapter 11 bankruptcy proceedings in 1989, selling its RASP Area real property primarily to Defendants KEN THOMPSON, INC., WONG CHUNG MING aka CHUNG MING WONG and/or TUNG CHUN COMPANY, and RDF Holding Company. Plaintiff is informed and believes, and based thereon alleges that RDF Holding Company purchased PYROTRONICS' trade fixtures, customer lists, equipment and inventory and subsequently sold them to Pyrodyne American Corporation, which later became American West, Inc. then American West Marketing, Inc., then American Promotional Events, Inc., then Defendant AMERICAN PROMOTIONAL EVENTS, INC. - WEST ("APE"). Plaintiff is informed and believes, and based thereon alleges, that PYROTRONICS owned and operated the 160-acre parcel in the RASP Site from approximately 1968 through 1989, during which time it also subdivided the property. Plaintiff is informed and believes, and based thereon alleges, that PYROTRONICS, also known at relevant times as Red Devil Fireworks Company, Clipper Pyrotechnics, Inc., Atlas Display Company, Apollo Manufacturing Company, United Fireworks Manufacturing, California Fireworks Display Company, and Fireworks Display Co., operated an approximately 75-building fireworks manufacturing facility on the 160 acres from approximately 1968 through 1989, at which it manufactured fireworks and flares containing perchlorate; that there were at least three major explosions at the "United Fireworks Manufacturing" plant between 1968-1970, one of which resulted in total destruction of the "press room" and one of which resulted in three fatalities and the total destruction of 20 buildings; that further fires and explosions at the PYROTRONICS facilities on the 160-acre RASP Site parcel occurred between 1970 and 1989; that PYROTRONICS aka United Fireworks Manufacturing reported using substantial quantities of potassium perchlorate in its

manufacturing process to COUNTY's Department of Environmental Health; and that PYROTRONICS aka United Fireworks Manufacturing was licensed to keep 320,000 pounds of chemicals on its site at any one time. Plaintiff is informed and believes, and based thereon alleges, that Defendant PYROTRONICS, which was the self-proclaimed "pyrotechnist to Disneyland" beginning in approximately 1968, required its employees working with perchlorate to wear protective cotton outer garments which were turned in to the plant laundry after each shift; washed each press room down with water after each shift and disposed of the residual pyrotechnic compound in a shallow, outdoor, uncovered concrete collector; swept press and mixing rooms with a dry brush and "seeping compound" and burned pyrotechnic compound residue in a pit; and operated a waste pond, later to become known as the "McLaughlin Pit" on a portion of the 160-acre property, into which it disposed of its own waste pyrotechnic materials and defective fireworks, as well as pyrotechnic compound, hazardous waste and defective and off-specification fireworks generated by the operations of Defendants PYRO SPECTACULARS, INC. and ASTRO PYROTECHNICS, and from which 3.5 million pounds of contaminated sludge materials were ultimately removed. Additionally, Plaintiff is informed and believes, and based thereon alleges, that Defendant PYROTRONICS leased portions of the 160-acre property to Defendant PYRO SPECTACULARS and/or Defendant ASTRO PYROTECHNICS and that Defendant WONG CHUNG MING currently leases the northern half of the 160-acre property to Defendants APE and PYRO SPECTACULARS.

35. Plaintiff is informed and believes, and based thereon alleges, that Defendant COUNTY OF SAN BERNARDINO ("COUNTY") is a governmental body that is a political and legal subdivision of the State of California, subject to compliance with all applicable, federal, state and local laws. Plaintiff is informed and believes, and based thereon alleges, that COUNTY is, and has continuously since approximately 1958 been the owner and operator of a public solid waste

disposal facility within the RASP Area known as the Mid-Valley Sanitary Landfill, which actively accepted (for disposal in unlined earthen areas) perchlorate-containing and other hazardous substances/wastes from others, including defendants herein, from approximately 1958 to the present. Plaintiff is informed and believes, and based thereon alleges, that COUNTY acquired certain property, consisting of approximately 96 acres within the RASP Area, in or about 1993 for an expansion of the Mid-Valley Sanitary Landfill from defendants EDWARD STOUT; EDWARD STOUT AS THE TRUSTEE OF THE STOUT-RODRIGUEZ TRUST, aka THE SCHULZ FAMILY TRUST; ELIZABETH RODRIGUEZ; JOHN CALLAGY AS TRUSTEE OF THE FREDERIKSEN CHILDREN'S TRUST UNDER TRUST AGREEMENT DATED FEBRUARY 20, 1985; LINDA FREDERIKSEN AS TRUSTEE OF THE E.F. SHULZ TRUST; JOHN CALLAGY AS TRUSTEE OF THE E.F. SCHULZ TRUST; LINDA FREDERIKSEN; LINDA FREDERIKSEN AS TRUSTEE OF THE WALTER M. POINTON TRUST DATED 11/19/91; LINDA FREDERIKSEN AS TRUSTEE OF THE MICHELLE ANN POINTON TRUST UNDER TRUST AGREEMENT DATED FEBRUARY 15, 1985; JOHN CALLAGY; MARY MITCHELL; JEANINE ELZIE; STEPHEN CALLAGY; MICHELLE ANN POINTON; ANTHONY RODRIGUEZ (collectively known and referred to at times herein as the "SCHULZ TRUST DEFENDANTS"). The CITY is further informed and believes and based thereon alleges, that the option and purchase and sale agreements between the COUNTY and the SCHULZ TRUST DEFENDANTS for the purchase and sale of this property discussed the possibility of its contamination with hazardous or toxic substances, materials or waste and require the COUNTY to indemnify the SCHULZ TRUST DEFENDANTS in the event of lawsuits relating to the same. Plaintiff is informed and believes, and based thereon alleges, that COUNTY in or about 1999 further expanded its Mid-Valley Sanitary Landfill by demolishing and razing former DOD military bunkers within the RASP Area and

importing and using perchlorate-contaminated soils and fill materials from those bunkers to construct expanded landfill areas, from which perchlorate leached into subsurface soils and groundwater. Plaintiff is informed and believes, and based thereon alleges, that COUNTY owns other property adjacent to or near the Mid-Valley Sanitary Landfill upon which rocket propellant and explosives manufacturers, fireworks manufacturers, hazardous waste disposal facility operators, and defense contractors who handled perchlorate and caused hazardous substances/wastes to be released into the environment formerly operated, and that gravel washing operations conducted by Defendant ROBERTSON'S READY MIX, INC., and/or others, and arranged by Defendant COUNTY on COUNTY's adjacent property, have further caused and contributed to releases of perchlorate into the environment at the RASP Site.

36. Plaintiff is informed and believes, and based thereon alleges, that Defendant ROBERTSON'S READY MIX, INC. ("RRM") is a California corporation, and is currently, and since approximately 1998 has been, actively engaged in the mining and removal of aggregate soil and mining overburden from the RASP Area to depths of up to approximately 200 feet, and that the aforesaid removed aggregate, soil and mining overburden are already contaminated with perchlorate and hazardous substances/wastes from the past activities of others, including Defendants herein, at the RASP Site. Plaintiff is informed and believes, and based thereon alleges, that at relevant times during its operations in the RASP Area Defendant RRM hauled the contaminated materials to a stockpile area facility located in the RASP Site, and washed them with large quantities of water in unlined wash ponds in the location of and/or constructed with materials from the former DOD bunker area as part of a process used to produce specification grade concrete and asphalt aggregate and sands for road base materials. Plaintiff is informed and believes, and based thereon alleges, that, during defendant RRM's on-site water wash process, perchlorate and hazardous substances/wastes already

present in the contaminated aggregate soils and materials from in and around the former bunker area dissolved in and contaminated the wash water, which was then released into and/or percolated through the soils and thereafter through downward percolation into the underlying groundwater in the contaminated aquifer/s. Plaintiff is informed and believes, and based thereon alleges, that RRM used large quantities of water—up to 460-acre feet of water per year—and that RRM was required by agreement to percolate the contaminated wash water back into the underlying aquifer/s, and that RRM from approximately 1998 to July 2003 did not export the used and contaminated wash water off site for other use or treatment to remove perchlorate. Plaintiff is informed and believes, and based thereon alleges, that the areas underlying and affected by RRM's washing operations which overlay the contaminated aquifer/s, consist of porous alluvial material through which the perchlorate-contaminated wash water released into the environment rapidly percolated and moved. Plaintiff is informed and believes, and based thereon alleges, that perchlorate and hazardous substances/wastes also are, and have been, released into the environment by other aspects of RRM's mining and processing operations, including, but not limited to, removing the contaminated aggregate materials from the ground, transporting them around the site, and storing them in the stockpile areas, and that in 2001, groundwater samples from Well F-6 on the RRM Site in the RASP Area went from "non-detect" to a level of 1000 ppb of perchlorate.

37. Plaintiff is informed and believes, and based thereon alleges, that Defendant BROCO ENVIRONMENTAL, INC. ("BROCO") is a suspended California corporation that owned and/or operated and/or leased several facilities in the RASP Area, where it engaged in the manufacture of perchlorate-containing products, and the acceptance, treatment, handling, storage, testing and disposal of hazardous wastes and substances containing, inter alia, perchlorate, from approximately 1966 through 2002. Plaintiff is informed and believes, and based

thereon alleges, that, inter alia, Defendant BROCO also stored perchlorate-containing hazardous wastes at its facilities; accepted shipments of perchlorate-containing hazardous wastes from generators (including defendant DOD, rocket, fireworks and explosives manufacturers and defense contractors) and other parties for storage, treatment and disposal; stored perchlorate-containing hazardous wastes at its facilities in open containers and cardboard boxes (thus exposing them directly to the elements and causing their release into the soil and groundwater); and disposed of perchlorate-containing wastes in open burn pits, by detonation, and by mixing them with other hazardous wastes and releasing them onto the soil and into the groundwater in the RASP Area and elsewhere. Plaintiff is informed and believes, and based thereon alleges, that BROCO also arranged for perchlorate-contaminated and hazardous wastes, cleaning products and other items associated with operation of its facilities to be disposed of at COUNTY's nearby Mid-Valley Sanitary Landfill site in the RASP Area. Plaintiff is informed and believes, and based thereon alleges, that BROCO also caused releases of perchlorate and hazardous substances/wastes into the soils and groundwater during the same time period through its then-on-site septic system.

38. Plaintiff is informed and believes, and based thereon alleges, that Defendant DENOVA ENVIRONMENTAL, INC. ("DENOVA") is and/or at relevant times was a California corporation and a corporate successor-in-interest to Defendant BROCO, and also engaged in the same actions and omissions in the same time frame alleged hereinabove as to BROCO.

39. Plaintiff is informed and believes, and based thereon alleges, that Defendant ENVIRONMENTAL ENTERPRISES, INC., is an Ohio corporation currently doing business in California, is a corporate successor to Defendants BROCO and DENOVA, engaged in the same actions and omissions in the same time frame alleged hereinabove as to BROCO, and is also responsible for the relevant liabilities of BROCO and DENOVA.

40. Plaintiff is informed and believes, and based thereon alleges, that Defendant AMERICAN PROMOTIONAL EVENTS, INC. - WEST ("APE") is an Alabama corporation and that it and/or its corporate predecessors and affiliates for whose liabilities it is responsible, including, but not limited to Pyrodyne American Corporation, American Pyrodyne Corporation, American West, Inc., American Promotional Events, Inc., Freedom Fireworks, Inc., and American West Marketing, Inc., leased, controlled and/or occupied a facility and/or parcel of real property located at 3196 North Locust Street in Rialto, which is part of the RASP Area, from approximately 1989 through the present. Plaintiff is informed and believes, and based thereon alleges, that Defendant APE is, and has since 1989 been, an importer, wholesaler and distributor of fireworks products that contain perchlorate; that since 1989 APE has handled, used and stored perchlorate-containing products at its RASP Area facility; that APE has performed on-site testing of various fireworks products containing perchlorate; and that APE has accepted return shipments of unpackaged, defective and unused perchlorate-containing fireworks from customers at its RASP Area facility. APE's handling, use, storage and testing of fireworks products containing perchlorate resulted in the release of perchlorate and/or hazardous substances into the soil and/or groundwater at the RASP Site. Plaintiff is informed and believes, and based thereon alleges, that APE and/or its predecessors used the McLaughlin Pit for the disposal of hazardous substances/wastes including, inter alia, perchlorate, and that APE and/or its predecessors and/or others used the McLaughlin Pit to dispose of scrap materials, defective and/or unsafe products, returned products and other perchlorate-containing and hazardous wastes generated by its/their operations, including, but not limited to, its/their fireworks testing and return receipt operations. Plaintiff is informed and believes, and based thereon alleges, that a former burn pit area controlled by APE and/or its predecessors or others, and located on APE's RASP Area facility, has recently been tested for perchlorate by

APE's environmental consultants under order of the Santa Ana RWQCB, and that said investigation has revealed substantial perchlorate contamination (up to 2,900 ppb) in those soils. Plaintiff is informed and believes, and based thereon alleges, that APE and/or its corporate predecessors and affiliates regularly burned hundreds of pounds of pyrotechnic wastes at the RASP Site, and perchlorate-containing and hazardous substances/wastes were also released into the environment through APE's on-site septic system from 1989 through the present. Plaintiff is informed and believes, and based thereon alleges, that Defendant APE also arranged to have its perchlorate-contaminated wastes disposed of at the Mid-Valley Sanitary Landfill and/or with other waste handlers and processors doing business on the RASP Site during the period from 1989 to the present.

41. Plaintiff is informed and believes, and based thereon alleges, that Defendant PYRO SPECTACULARS, INC. ("PYRO") is a California corporation that has at relevant times, from approximately 1979 through the present, owned, leased and/or operated facilities located at 3196 North Locust Avenue and/or 2298 West Stonehurst in Rialto, which are 25-acre and 5-acre sites, respectively, located in the RASP Area. Plaintiff is informed and believes, and based thereon alleges, that Defendant PYRO, and related corporate entities and affiliates (including, but not limited to, Defendants TROJAN FIREWORKS and ASTRO PYROTECHNICS, INC.) owned and/or operated facilities at the aforesaid locations at which perchlorate in chemical form, pyrotechnic compositions containing perchlorate and/or products containing perchlorate were received, handled, stored, assembled, manufactured, burned, disposed of, and tested, some of which activities occurred in partnership with the former California Fireworks Display Company and/or Defendants APE and/or PYROTRONICS, and that these activities, for which PYRO is legally responsible, caused a release of perchlorate and/or hazardous substances into the soil and/or groundwater at the RASP Site. Plaintiff is informed and believes, and based thereon alleges that PYRO stored

"hot" perchlorate wastes on one or both of its sites and that PYRO and/or its corporate predecessors and/or affiliates regularly burned hundreds of pounds of pyrotechnic wastes at the RASP Site, resulting in incomplete combustion, dispersal, releases and discharges of perchlorate and hazardous substances/wastes into the soil and/or groundwater at the RASP Site. Plaintiff is informed and believes, and based thereon alleges, that Defendant PYRO used the aforesaid properties through at least 2004 for the handling of perchlorate and perchlorate-containing products, and for the manufacture, assembly and storage of large-scale and consumer fireworks. Plaintiff is informed and believes, and based thereon alleges, that Defendant PYRO disposed of pyrotechnic composition and defective and obsolete perchlorate-containing products in the McLaughlin Pit at the RASP Site facilities; collected and stored perchlorate-contaminated and hazardous wastes, including wash water, accumulated liquids and sludge wastes generated during the fireworks manufacturing process, on concrete pads located outside of and adjacent to its work buildings, which pads overflowed and/or leaked onto the soil and/or groundwater at the RASP Site; since the 1970s stored perchlorate-containing products in cardboard boxes and paper and plastic drums (thus exposing them directly to the elements and causing their release into the soil and groundwater); and accepted and accepts return shipments of unpackaged, defective and unused perchlorate-containing fireworks from its customers at its facilities in the RASP Site. Plaintiff is informed and believes, and based thereon alleges, that, to dispose of scrap materials, defective and/or unsafe products, returned products and other hazardous substances/wastes, including wastes containing perchlorate generated by its operations, PYRO also burned pyrotechnic composition and products containing perchlorate in a burn pit located at its 3196 North Locust Street facility, at a burn pit located at its 2298 Stonehurst facility and at burn pits located in and around the B-1 Bunker, all located within the RASP Site. Plaintiff is informed and believes and thereon alleges that PYRO's burning caused the release of perchlorate

and/or hazardous substances into the soil and/or groundwater at the RASP Site. Plaintiff is informed and believes, and based thereon alleges, that PYRO's on-site septic system also released perchlorate-contaminated and hazardous wastes into the environment from 1979 through the present, and that PYRO also arranged during that time period for its perchlorate-contaminated and hazardous wastes to be disposed of at COUNTY's Mid-Valley Sanitary Landfill and/or with other waste handlers and processors doing business on the RASP Site in this time period. Plaintiff is informed and believes, and based thereon alleges, that recent investigations conducted by PYRO's consultants under order of the Santa Ana RWQCB have revealed high concentrations (up to approximately 32,000 ppb) of perchlorate in the soils at PYRO's RASP Area facilities.

42. Plaintiff is informed and believes and thereon alleges that Defendants APE and PYRO operate in some of the original WCLC buildings that Defendant PYROTRONICS converted to fireworks manufacturing use. Plaintiff is informed and believes, and based thereon alleges, that Defendant PYROTRONICS' acts and omissions resulted in releases and discharges of perchlorate and hazardous substances/wastes to the soils and underlying groundwater at and from its RASP Site facilities.

43. Plaintiff is informed and believes, and based thereon alleges, that Defendant TROJAN FIREWORKS ("TROJAN") is a dissolved California corporation and engaged in fireworks manufacturing at the RASP site from approximately 1974 through 1987, and engaged in the same actions and omissions alleged herein as to PYROTRONICS, PYRO and ASTRO at relevant times. Between 1972 and 1988, TROJAN was a California corporation, which operated a facility at 2298 Stonehurst in the RASP Site and in the military bunker complex area near Bunker B-1, at which it handled, used, tested, burned and manufactured pyrotechnic composition and/or products containing perchlorate, and that TROJAN's operations caused a release of perchlorate and/or hazardous substances

into the soil and/or groundwater at the RASP Site. Plaintiff is informed and believes and thereon alleges that TROJAN tested fireworks and/or other products containing perchlorate at its facilities, and burned waste pyrotechnic composition and defective fireworks containing perchlorate on the bare earth and in earthen burn pits located at its facilities, and that these operations caused a release of perchlorate and/or hazardous substances into the soil and/or groundwater at the RASP Site. Plaintiff is informed and believes and thereon alleges that explosions, fires and/or accidents at the TROJAN facilities caused a release of perchlorate and/or hazardous substances into the soil and/or groundwater at its RASP Site facilities. Plaintiff is informed and believes and thereon alleges that TROJAN used water to wash down its manufacturing buildings in which pyrotechnic compounds containing perchlorate were weighed, screened, mixed and otherwise processed, on a nearly daily basis, and that the perchlorate-containing slurry wastes were collected outside of the manufacturing buildings in sludge collectors that overflowed from time to time, causing releases of perchlorate and/or hazardous substances into the soil and/or groundwater at the RASP Site. Plaintiff is informed and believes and thereon alleges that TROJAN collected and stored slurry wastes and other manufacturing wastes containing perchlorate in cardboard and/or paper containers, exposing them directly to the environment, and burned these same wastes at its facility, causing a release of perchlorate and/or hazardous substances into the soil and/or groundwater at the RASP Site.

44. Plaintiff is informed and believes, and based thereon alleges, that Defendant ASTRO PYROTECHNICS, INC. ("ASTRO") was at relevant times a California corporation and a corporate predecessor, successor and/or affiliate of Defendants PYRO and/or TROJAN, and engaged in the same actions and omissions in the same time frames alleged hereinabove as to PYRO and/or TROJAN. Plaintiff is informed and believes, and based thereon alleges, that on or about June 2, 2004, a fire occurred at Defendant ASTRO's commercial RASP

Area facility at 2298 West Stonehurst Drive, which released and discharged hazardous substances/wastes, including perchlorate, into the environment and soils surrounding the burned building.

45. Plaintiff is informed and believes, and based thereon alleges, that Defendant ZAMBELLI FIREWORKS MANUFACTURING CO., aka Zambelli Fireworks Internationale and Zambelli Fireworks Manufacturing Co., Inc., is and at relevant times was a Pennsylvania corporation, and that it and/or its corporate predecessors for whose actions and liabilities it is responsible ("ZAMBELLI"), leased, rented, controlled and/or occupied a munitions storage bunker and fireworks manufacturing plant on property located at 2170 West Stonehurst Drive in Rialto, which is within the RASP Area, from approximately 1982 (or earlier) through 1991. Plaintiff is informed and believes, and based thereon alleges, that during its period of occupation and use of the property, Defendant ZAMBELLI manufactured, distributed, stored and sold wholesale on and from that site fireworks products containing perchlorate. Plaintiff is informed and believes, and based thereon alleges, that as part of ZAMBELLI's on-site manufacturing activities, it handled raw perchlorate salts, tested fireworks, and accepted (as it was required to do under federal law) return shipments of defective, unpackaged and unused perchlorate-containing fireworks products from its customers. Plaintiff is informed and believes, and based thereon alleges, that Defendant ZAMBELLI released perchlorate and hazardous substances/wastes into the environment through its manufacturing, maintenance, and other activities on the site, as well as through its then-on-site septic system, between approximately 1982 and 1991, and that it also arranged to have its perchlorate-contaminated and hazardous wastes disposed of at Defendant COUNTY's Mid-Valley Sanitary Landfill and/or with other waste handlers and processors doing business on the RASP Site during this time period.

46. Plaintiff is informed and believes, and based thereon alleges, that Defendant RAYTHEON COMPANY is and at relevant times was a Delaware corporation and that it, and its corporate predecessors-in-interest, for whose liabilities it is responsible (collectively, "RAYTHEON"), leased from Defendant BROCO, certain property located at 2824 North Locust Street, within the RASP Area, from approximately 1984 through 1994, and purchased Hughes Missile Systems in 1998. Plaintiff is informed and believes, and based thereon alleges, that between 1984 and 1994, Defendant RAYTHEON (and/or its corporate predecessors, for whose acts and omissions RAYTHEON is also subject to liability) handled, stored and arranged for the disposal of perchlorate-containing products, including, but not limited to, squibs, detonators, toy rocket motors, ammunition, cartridges, chords, fuses, initiators, actuators and propellants, and accepted shipment of returned defective and/or obsolete products at the 2824 North Locust Street facility. Plaintiff is informed and believes, and based thereon alleges, that Defendant RAYTHEON arranged for some or all of these perchlorate-containing products to be disposed of at Defendant BROCO's RASP Area site and/or Defendant COUNTY's Mid-Valley Sanitary Landfill, where perchlorate was released from them into the environment. Plaintiff is informed and believes, and based thereon alleges, that on one or more occasions between 1984 and 1994, as a result of RAYTHEON's above-described activities at its facility, and including releases from its on-site septic system, Defendant RAYTHEON released hazardous substances/wastes, including perchlorate, into the environment within the RASP Site.

47. Plaintiff is informed and believes, and based thereon alleges, that Defendant GENERAL DYNAMICS CORPORATION is and at relevant times was a Delaware corporation, and is a corporate predecessor of Defendant RAYTHEON, and engaged in the same actions and omissions in the same time frame alleged hereinabove as to RAYTHEON. Plaintiff is informed and believes,

and based thereon alleges, that in or about 1992, GENERAL DYNAMICS CORPORATION sold its General Dynamics Air Systems Division to Defendant RAYTHEON, which continued to operate that division until 1994.

48. Plaintiff is informed and believes, and based thereon alleges, that Defendant HUGHES AIRCRAFT COMPANY is and at relevant times was a Delaware corporation, and is a corporate predecessor of Defendant RAYTHEON, and engaged in the same actions and omissions in the same time frame alleged hereinabove as to RAYTHEON. Plaintiff is informed and believes, and based thereon alleges, that in approximately 1992, Defendant HUGHES AIRCRAFT COMPANY sold its Hughes Missile Systems division to Defendant RAYTHEON, which continued to operate that division until 1994.

49. Plaintiff is informed and believes, and based thereon alleges, that Defendant TUNG CHUN COMPANY is and at relevant times was a business entity of unknown form, and has since 1988 been owner and lessor of a facility located at 3196 North Locust Avenue (APNs 0239-192-16 and 0239-192-18) in Rialto, within the RASP Site. Plaintiff is informed and believes, and based thereon alleges, that prior to its acquisition by the TUNG CHUN COMPANY and/or Defendant WONG CHUNG MING aka CHUNG MING WONG ("MING"), the aforesaid property was part of a larger property and facility owned and operated by Defendant PYROTRONICS CORPORATION, a wholesale and retail fireworks manufacturer that handled, stored, tested, burned and disposed of defective and obsolete products, as well as waste from its manufacturing process there between approximately 1969 and 1987, and that these activities resulted in releases of hazardous substances/wastes, including perchlorate, to the environment at the RASP Site. Plaintiff is informed and believes, and based thereon alleges, that PYROTRONICS CORPORATION used up to 25,000 pounds of potassium perchlorate per month during its 18-year tenure as a fireworks manufacturer at the RASP Site property transferred to Defendants TUNG CHUN COMPANY and/or

MING, and disposed of perchlorate-containing and hazardous wastes, and defective and unused products in unlined disposal pits and ponds, in its on-site septic system, and by burning them. Plaintiff is informed and believes, and based thereon alleges, that accidental fires and explosions at PYROTRONICS also resulted in the release of hazardous substances/wastes, including perchlorate, to the environment at the RASP Site. Plaintiff is informed and believes, and based thereon alleges, that at various times between 1988 and the present, Defendant TUNG CHUN COMPANY leased, and continues to lease, the 3196 North Locust Avenue property and facilities to Defendant APE, Defendant PYRO, and/or their predecessors/affiliates, and/or other fireworks and pyrotechnics businesses. Plaintiff is informed and believes, and based thereon alleges, that TUNG CHUN COMPANY's lessees included fireworks and pyrotechnics manufacturers and wholesalers who handled, stored, manufactured, burned, tested and disposed of defective and obsolete products containing perchlorate at the 3196 North Locust Avenue property between 1988 and the present, resulting in releases of hazardous substances/wastes, including perchlorate, into the environment at the RASP Site. Plaintiff is informed and believes, and based thereon alleges, that such lessees accepted and accept return shipments of unpackaged, defective, and unused perchlorate-containing fireworks from their customers, and disposed and dispose of perchlorate-containing products, hazardous wastes and materials into an unlined disposal pit on the 3196 North Locust Avenue property; they also collected and stored perchlorate-contaminated and hazardous wastes on outdoor concrete pads, which would leak and overflow during storm events and at other times, releasing hazardous substances/wastes, including perchlorate, into adjacent soils; and they also released perchlorate into the environment through the on-site septic system from 1988 through the present.

50. Plaintiff is informed and believes, and based thereon alleges, that Defendant WONG CHUNG MING aka CHUNG MING WONG ("MING") is an

individual residing in Hong Kong, but owning real property and doing business in the State of California. Since 1988, Defendant MING has been an owner and lessor of the facility located at 3196 North Locust Avenue (including APNs 0239-192-16 and 0239-192-18) in Rialto, within the RASP Site, in the same manner as, and is responsible as an owner of that facility for the same acts and omissions hereinabove alleged as to, Defendant TUNG CHUN COMPANY.

51. Plaintiff is informed and believes, and based thereon alleges, that Defendant WHITTAKER CORPORATION ("WHITTAKER") is a Delaware corporation, that it is a corporate successor in interest to, and legally responsible for the liabilities of DELTA T, INC., which was previously known as American Explosives Company and AMEX Products, Inc. and Tasker Industries, Inc., which was merged into Defendant WHITTAKER. WHITTAKER owned and/or operated properties and facilities located at 2298 West Stonehurst Drive, in the Military Bunker Complex and on Alder Street in Rialto within the RASP Area, from approximately 1964 through 1974, and operated the facilities on these properties at which perchlorate-containing military and commercial pyrotechnic and explosive devices were designed, tested, fabricated and stored. Plaintiff is informed and believes, and based thereon alleges, that Defendant WHITTAKER manufactured, designed, tested, handled, stored and arranged for disposal of numerous products containing perchlorate, including, but not limited to, a variety of flares and explosive signaling devices, reflectors, mortars, launchers, rocket heads, rockets, squibs, detonators, chords, fuses, initiators, actuators, pyrotechnics and propellants, at its RASP Area properties during the 1964 to 1974 time period. Plaintiff is informed and believes, and based thereon alleges, that WHITTAKER's on-site facilities included a chemical laboratory and powder-mixing building at which it processed and mixed chemicals, including perchlorate, for use in its products; and that WHITTAKER also dried perchlorate for use in its products, assembled explosive devices containing perchlorate, and tested explosives and rockets at a 15-

acre test range (northwest of the AMEX plant on Alder Street) that included a permanent test stand. Plaintiff is informed and believes, and based thereon alleges, that Defendant WHITTAKER accepted shipments of returned defective and/or obsolete products, and arranged for disposal of some or all of these perchlorate-contaminated products, and of operational wastes containing perchlorate and hazardous substances/wastes, at Defendant BROCO's site and/or Defendant COUNTY's Mid-Valley Sanitary Landfill where perchlorate from them was released into the environment. Plaintiff is informed and believes, and based thereon alleges, that Defendant WHITTAKER regularly burned its perchlorate-containing and hazardous wastes in earthen burn areas and/or pits at its RASP Area facilities, causing perchlorate and hazardous substances/wastes to be released into the environment, and that fires and explosions at WHITTAKER's facilities caused further releases of perchlorate and hazardous substances/wastes into the environment at the RASP Site. Plaintiff is informed and believes that WHITTAKER tested its perchlorate-containing products on the bare ground at its RASP Area facilities, causing the release of perchlorate and/or hazardous substances into the environment.

52. Plaintiff is informed and believes, and based thereon alleges, that Defendant DELTA T., INC. was a California Corporation and is liable for the same actions, omissions, and reasons as Defendant WHITTAKER.

53. Plaintiff is informed and believes, and based thereon alleges, that Defendant E.T.I. EXPLOSIVES TECHNOLOGIES, INC. OF CALIFORNIA, is and at relevant times was a Delaware corporation, and that it and its corporate predecessors, successors, affiliates and/or subsidiaries, for whose actions and liabilities it is responsible (collectively "ETI") owned and/or conducted operations (described in more detail below) on, properties located at 2900 N. Tamarind Avenue, and at North Highland/Stonehurst and Alder Avenues in Rialto, within the RASP Site, from approximately 1983 through 1997, whereby perchlorate and

hazardous substances/wastes were discharged into the soils and underlying groundwater in the RASP Area. Plaintiff is informed and believes, and based thereon alleges, that Defendant ETI operated facilities on these properties at which it designed, tested, fabricated, and stored military and commercial pyrotechnic and explosive devices that contained perchlorate during this time frame. Plaintiff is informed and believes, and based thereon alleges, that ETI manufactured, designed, tested, burned, detonated, handled, stored, distributed and arranged for disposal of numerous perchlorate-containing products including, but not limited to, various oxidizers, blasting agents, detonators, boosters, detonator chords, and safety fuses at its facilities; ETI commonly handled several thousand "Electric Super Detonators" and "Primadet Detonators," each of which contained potassium perchlorate, at its facilities each month. Plaintiff is informed and believes, and based thereon alleges, that ETI was permitted to store up to 300,000 pounds of explosives and other hazardous materials at its facilities at any given time during the relevant time period; that ETI also accepted shipments of returned defective and/or obsolete products at its sites, and arranged for some or all of its perchlorate-containing products and operational hazardous wastes to be disposed of at Defendant BROCO's site and/or Defendant COUNTY's Mid-Valley Sanitary Landfill; and that ETI additionally released perchlorate-contaminated and hazardous substances/wastes into the environment through its on-site septic system.

54. Plaintiff is informed and believes, and based thereon alleges, that Defendant AMERICAN WEST EXPLOSIVES at relevant times was a Delaware corporation, and a corporate predecessor, successor, affiliate and/or subsidiary of Defendant ETI, and is responsible for and/or engaged in the same actions and omissions in the same time frame alleged hereinabove as to ETI.

55. Plaintiff is informed and believes, and based thereon alleges, that Defendant GOLDEN STATE EXPLOSIVES at relevant times was a California

corporation, and a corporate predecessor, successor, affiliate and/or subsidiary of Defendant ETI, and is responsible for and/or engaged in the same actions and omissions in the same time frame alleged hereinabove as to ETI.

56. Plaintiff is informed and believes, and based thereon alleges, that SCHULZ TRUST DEFENDANTS and their predecessors, trustor/s, beneficiaries and/or affiliates for whose acts and omissions they are responsible, including, but not limited to, Edward F. Schulz, the Estate of Edward F. Schulz, and the Schulz Family Trust (collectively the "SCHULZ TRUST DEFENDANTS") own and/or owned at relevant times since 1947 approximately 100 acres of land in the RASP Area, comprised of an irregularly-shaped group of parcels located in the west central portion of Section 28, and the northeast portion of Section 29, of Township North, Range 5 West, San Bernardino Baseline and Meridian (SB B&M) in Rialto. Plaintiff is informed and believes, and based thereon alleges, that the SCHULZ TRUST DEFENDANTS, beginning in about 1950, leased portions of the 100 acres to a series of companies that manufactured, assembled, tested and stored pyrotechnic devices, fireworks, rockets, rocket propellants and/or explosives containing perchlorate; and that these companies included but were not limited to, Defendants BROCO, ETI, and ZAMBELLI FIREWORKS. Plaintiff is informed and believes, and based thereon alleges, that these and possibly other fireworks and rocket manufacturers, and defense contractors, handled, stored, manufactured, burned, and tested products containing perchlorate at the SCHULZ TRUST DEFENDANTS' property between about 1950 and the present, and that some still currently use the property for the assembly and storage of large-scale fireworks. Plaintiff is informed and believes, and based thereon alleges, that many or all of these companies have disposed of defective and obsolete products containing perchlorate and hazardous substances/wastes directly onto the ground and/or in an unlined earthen disposal pit or pits on the Schultz Trust Defendants' property, causing the hazardous substances to be released into the environment almost

continuously since the early 1950s; that some or all of said lessee companies have obtained burning permits, and have test-fired and burned perchlorate-containing products openly on the property, causing perchlorate and hazardous substances/wastes to be released into the environment almost continuously since the early 1950s; and that some or all of said lessee companies also disposed of and/or stored for disposal perchlorate-contaminated and hazardous wastes on concrete pads, which leak and overflow during storm events and at other times, thereby releasing perchlorate and hazardous substances/wastes onto the ground and into the environment. Plaintiff is informed and believes, and based thereon alleges, that the SCHULZ TRUST DEFENDANTS and/or their lessee companies also arranged for disposal of perchlorate-contaminated and hazardous wastes at Defendant BROCO's facility and/or Defendant COUNTY's Mid-Valley Sanitary Landfill during the SCHULZ TRUST DEFENDANTS' ownership, maintenance and management of the properties they owned and leased. The negligence, and other allegations of this Complaint against Defendants generally, unless otherwise expressly stated, apply specifically to the trustees of the Schulz Trust named herein, with respect to their ownership, management, use and control of their relevant RASP Area properties.

57. Plaintiff is informed and believes, and based thereon alleges, that Defendant ENSIGN-BICKFORD COMPANY ("ENSIGN-BICKFORD") is and at relevant times was a Connecticut corporation, and that it and/or its corporate predecessor ORDNANCE ASSOCIATES leased and operated a facility at the RASP Site from approximately 1964 through 1966, at which it designed, tested, and manufactured rockets, missiles, and/or other aerospace-industry products and/or components, the propellants for and/or contents of which contained perchlorate. Plaintiff is informed and believes, and based thereon alleges, that Defendant ENSIGN-BICKFORD, and/or its corporate affiliates and/or predecessors, manufactured, designed, tested, handled, stored and arranged for

disposal of perchlorate-containing products for the U.S. Army (a military department of Defendant DOD), NASA and other defense and aerospace industry entities during its occupancy of the RASP Site; that Defendant ENSIGN-BICKFORD has a long history of explosives manufacturing and aerospace product research and development; that rocket and missile fuels are commonly comprised of up to 90% perchlorate salts by dry weight; that up to 70% (by dry weight) of spacecraft propellant is comprised of perchlorate salts; that a single rocket launch into space requires up to 700,000 pounds of perchlorate propellant; that one of the projects for which Defendant ENSIGN-BICKFORD handled and used perchlorate at the RASP Site was the Gemini Space Program; that Defendant ENSIGN-BICKFORD was the primary pyrotechnics contractor for the Gemini project and was responsible for the design, testing and manufacturing of pyrotechnic separation devices for the spacecraft; and that Defendant ENSIGN-BICKFORD also manufactured reefing line cutters, electrical squibs, igniters, and time delay fuses at the RASP Site, all of which contained perchlorate. Plaintiff is informed and believes, and based thereon alleges, that Defendant ENSIGN-BICKFORD also disposed of some of its perchlorate-contaminated and hazardous substances/wastes through its on-site septic system and/or at the Defendant BROCO's site and/or Defendant COUNTY's Mid-Valley Sanitary Landfill during its operations at the RASP Site.

58. Plaintiff is informed and believes, and based thereon alleges, that Defendant ORDNANCE ASSOCIATES at relevant times was a California corporation, and that it was a corporate affiliate and/or predecessor in interest of Defendant ENSIGN-BICKFORD, and is responsible for and/or engaged in the same actions and omissions in the same time frame alleged hereinabove as to Defendant ENSIGN-BICKFORD.

59. Plaintiff is informed and believes, and based thereon alleges, that Defendants THOMAS O. PETERS and/or THOMAS O. PETERS REVOCABLE

TRUST (collectively "PETERS") is and/or at relevant times was an individual/revocable trust who owns, and/or who previously owned and/or operated facilities at, three parcels of real property (APNs 1133-071-05-0000, 1133-071-06-0000 and 1133-071-007-0000), commonly referred to as 2298 Stonehurst in Rialto, and located within the RASP Site. Plaintiff is informed and believes, and based thereon alleges, that from approximately 1973 through 1988, PETERS owned and operated Defendant TROJAN FIREWORKS on this property, and also leased from the SCHULZ TRUST DEFENDANTS and operated nearby former military bunkers at which he engaged in fireworks manufacturing activities, and since 1988 has leased his RASP Area properties to other fireworks manufacturers. Plaintiff is informed and believes, and based thereon alleges, that Defendant PETERS owned and/or operated facilities at which perchlorate-containing products were handled, stored, manufactured, burned and tested between 1973 and 1988, and now owns property in the RASP Area on which others have thereafter handled, stored, manufactured, burned and tested such products. Plaintiff is informed and believes, and based thereon alleges, that Defendant PETERS and/or his lessees and affiliates disposed of pyrotechnic compounds containing perchlorate and/or hazardous substances, and defective and obsolete products and hazardous substances/wastes, including wastes containing perchlorate, by burning them on or near Defendant PETERS' property in the RASP Site since 1973; that Defendant PETERS and/or his lessees and affiliates also disposed of and/or stored perchlorate-contaminated and hazardous substances/wastes in concrete collectors or pads equipped with clarifiers, which leaked and overflowed during storm events and at other times, releasing chemical wastes containing perchlorate into the soil and groundwater; that the said clarifiers were improperly abandoned and left exposed to the environment, while still containing perchlorate-contaminated liquids and sludges, by Defendant PETERS and his lessees and affiliates until at least 2001; that perchlorate-tainted and

hazardous wastes from the operations of Defendant PETERS and his lessees and affiliates, including floor sweepings, off-specification products, returned and defective products, and damaged imported products, were stored in cardboard boxes and drums, and in paper bags, then burned and/or disposed of at an unlined pit on or near Defendant PETERS' property from 1973 to the present; and that a 1987 explosion at Defendant PETERS' property also resulted in the release of perchlorate and hazardous substances/wastes into the environment, within the RASP Area. Plaintiff is also informed and believes, and based thereon alleges, that Defendant PETERS and/or his lessees arranged to have some of the perchlorate-contaminated and hazardous waste from his RASP Site properties and facilities disposed of at Defendant COUNTY's Mid-Valley Sanitary Landfill and/or with other waste handlers and processors doing business on the RASP Site within the relevant time frame, including Defendant BROCO.

60. Plaintiff is informed and believes and based thereon alleges, that defendant Harry Hescox ("HESCOX") is an individual residing in the State of California and at all times relevant was an operator of the PYROTRONICS fireworks manufacturing business and facility, previously located within a portion of the former RASP Area ("PYROTRONICS FACILITY"). HESCOX was responsible for and had the actual and apparent ability to control all manufacturing operations and waste disposal operations at the PYROTRONICS FACILITY. HESCOX was, at relevant times, an officer, director and/or employee of PYROTRONICS acting within the course and scope of his employment with PYROTRONICS. Plaintiff is further informed and believes and thereon alleges, that during HESCOX's operation of the PYROTRONICS FACILITY, hazardous substances were released into the environment as a result of periodic, but not regular, accidental events, at least some of which were sudden. Such releases include, but are not limited to: three fires in May of 1971, February 1976 and October 1976 and accidental overflows of the McLaughlin Pit, which Plaintiff is

informed and believes was built by PYROTRONICS in or about 1972. Plaintiff is informed and believes, and based thereon alleges, that such events resulted in the release of hazardous substances into the environment. Accordingly, HESCOX is liable under CERCLA as an operator.

61. Plaintiff is informed and believes, and based thereon alleges, that defendant Fred Skovgard ("SKOVGARD") is an individual who operated the WCLC business and facility, and who is responsible for all relevant liability of WCLC. Plaintiff is informed and believes, and based thereon alleges, that Defendant EMHART has fully indemnified SKOVGARD for any and all liability that he may incur in this action while, at the same time, denying that EMHART is the corporate successor of WCLC and that it is liable to Plaintiff. Plaintiff is further informed and believes, and based thereon alleges, that SKOVGARD was, at relevant times, the chief chemist for WCLC, and that SKOVGARD personally participated in, and exerted control over, the discharge and release of hazardous substances, including perchlorate, into the environment at the WCLC facility. Plaintiff is further informed and believes, and based thereon alleges, that SKOVGARD personally released and/or directed the release of perchlorate into the environment through the testing of pyrotechnic products containing perchlorate on the bare ground and the disposal of perchlorate in unlined earthen pits on the WCLC facility.

62. Plaintiff is informed and believes, and based thereon alleges, that defendant Mildred Wilkins ("WILKINS") is an individual who operated the WCLC business and facility, and who is responsible for all relevant liability of WCLC. Plaintiff is informed and believes, and based thereon alleges, that Defendant EMHART has fully indemnified WILKINS for any and all liability that he may incur in this action while, at the same time, denying that EMHART is the corporate successor of WCLC and that it is liable to Plaintiff. Plaintiff is further informed and believes, and based thereon alleges, that WILKINS was, at relevant

times, a production worker who personally participated in, and exerted control over, the discharge and release of hazardous substances, including perchlorate, into the environment at the WCLC facility. Plaintiff is further informed and believes, and based thereon alleges, that WILKINS personally released and/or directed the release of perchlorate into the environment through the testing of pyrotechnic products containing perchlorate on the bare ground and the disposal of perchlorate in unlined earthen pits on the WCLC facility.

63. Plaintiff is informed and believes, and based thereon alleges, that Defendants KEN THOMPSON, INC., and RIALTO CONCRETE PRODUCTS (collectively hereinafter "THOMPSON") are, and at all relevant times were, California Corporations, and that THOMPSON and/or its corporate predecessors are, and since 1987 have been, the owners of a facility located in the vicinity of the 160 acre parcel in Rialto and within the RASP Area. Plaintiff is informed and believes, and based thereon alleges, that the THOMPSON facility was owned by Defendant PYROTRONICS CORPORATION from 1969 until it was transferred to THOMPSON, that PYROTRONICS CORPORATION was a wholesale and retail fireworks manufacturer who handled, stored, tested, burned and disposed of defective and obsolete products, as well as waste from its manufacturing process at the THOMPSON facility between 1969 and 1987, and that these activities resulted in releases of perchlorate to the environment at the RASP Site. Plaintiff is informed and believes, and based thereon alleges, that perchlorate was disposed of by PYROTRONICS and by Defendant PYRO at the THOMPSON facility in unlined, earthen disposal pits, in a pond, which overflowed from time to time, by burning it on the bare ground, by testing pyrotechnic devices and by accidental fires and explosions. Plaintiff is informed and believes, and thereon alleges, that the property owned by THOMPSON currently contains perchlorate and TCE discharged by the operations of WCLC, GOODRICH, PYRO, PYROTRONICS, ORDNANCE ASSOCIATES and/or HESCOX.

64. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times mentioned in this Complaint each of the Defendants was the agent, owner, principal, representative, employee, partner, affiliate, subsidiary, predecessor in interest, successor in interest, or joint venturer of each of the remaining Defendants and, at all relevant times, in doing the things hereinabove and hereinafter alleged, was acting within the course and scope of such agency, representation, employment, partnership, successorship, joint venture, or other relationship, as more particularly alleged. The term "Defendants" when used in this Complaint refers to all defendants, and also includes each defendant individually.

OTHER RELEVANT FACTUAL BACKGROUND

65. Perchlorate contamination was first detected in the Rialto, Colton and Chino subbasins in late 1997. Until late 1997, and the advent of ion chromatography, the technology to detect perchlorate in water wells at concentrations as low as 4 ppb - the former California action level, as heretofore alleged—did not exist. In 1997, the California Department of Health Services (DHS) Action Level for perchlorate in drinking water was 18 ppb; in January 2002, the DHS lowered the action limit to 4 ppb for perchlorate. Subsequent to the filing of the initial complaint in this action, on or about March 12, 2004, the California EPA's OEHHA issued a Public Health Goal for Perchlorate in Drinking Water ("PHG") of 6 ppb, and the DHS revised the Action Level to 6 ppb.

66. Since October 1997, sampling in CITY'S Rialto Well No. 2, a well with capacity of 2045 gallons per minute ("GPM") located at 980 W. Easton Avenue in Rialto, approximately 3,000 feet south of the RASP Site, has revealed perchlorate concentrations at levels ranging up to 130 ppb. The CITY took that well out of service in October 1997.

67. Since March 2001, sampling in Rialto Well No. 6, a well with capacity of 2554 GPM located at 224 West Etiwanda Avenue in Rialto,

approximately 10,000 feet to the southeast of Well No. 2, has revealed perchlorate concentrations at levels ranging between 16 and 54 ppb, and the CITY took that well out of service in March 2001.

68. In July 2002, sampling in CITY's Chino Well No. 1, a well with capacity of 1740 GPM located at 780 West Rialto Avenue in Rialto, approximately 13,000 feet south and slightly east of CITY Well No. 2, revealed the presence of perchlorate at a concentration of 9 ppb, and the CITY took that well out of service.

69. In October 2002, sampling in Rialto Well No. 4, a well with capacity of 2492 GPM located between Rialto Well No. 2 and Chino Well No. 1 at 725 West Baseline Avenue in Rialto, revealed the presence of perchlorate at a concentration of 5.6 ppb, and the CITY took that well out of service. Subsequent testing has revealed that perchlorate contamination in Rialto Well No. 4 is intermittent, and that it sometimes produces clean, potable water that tests "non-detect" for perchlorate. Rialto Well No. 4 is now used only intermittently and in emergency need situations, and then only when it "tests clean" for perchlorate.

70. In October 2002, sampling in CITY's Chino Well No. 2, a well with capacity of 1694 GPM located at 225 Bloomington Avenue in Rialto, to the southeast of Chino Well No. 1, revealed the presence of perchlorate at a concentration of 4.6 ppb, and the CITY took that well out of service.

71. Plaintiff is informed and believes, and based thereon alleges, that in response to the reduced action level of 4 ppb and/or the subsequent PHG/new action level of 6 ppb, other local water purveyors pumping from the contaminated aquifer/s have restricted or eliminated the use of additional production wells with perchlorate concentrations that exceeded 4 ppb and/or 6 ppb, and/or have incurred significant expenses for well-head treatment of perchlorate contamination, inter alia, as alleged hereinabove.

72. Plaintiff is informed and believes, and based thereon alleges, that the activities of the named Defendants and GOODRICH as alleged herein resulted in

discharges and disposals of hazardous substances and wastes which have over time significantly contaminated the soil and groundwater underlying the RASP Area, producing a contaminant plume of hazardous substances and wastes, including perchlorate, which has migrated generally in a southeasterly direction, extending over many miles through one or more contaminated aquifers and contaminating numerous of Plaintiffs municipal water supply wells, and surrounding property and natural groundwater resources and proprietary and other interests, with hazardous substances and wastes, including perchlorate.

73. Plaintiff is informed and believes and based thereon alleges that the perchlorate plume emanating from where the Defendants formerly operated and currently operate has and continues to migrate towards the City of Colton. Preliminary analysis and characterization of the perchlorate plume and its migration have revealed that a basin-wide cleanup is necessary.

74. Plaintiff has substantially complied with the applicable provisions of the NCP in conducting all of its response activities, and has maintained documentation to support all response actions. Such documents relate to the source and circumstances of the releases of perchlorate and the identity of responsible parties, including but not limited to, an investigation of historical activities on the RASP site and documents regarding the impacts and potential impacts to the public health and welfare and the environment related to the perchlorate contamination. Plaintiff has maintained an accurate accounting of costs incurred for all of its response actions. Plaintiff's response actions have not yet been completed.

75. Plaintiffs response activities include investigations, including but not limited to investigations relating to the source of the contamination, the potentially responsible parties and their historical and/or current activities, the health effects of perchlorate, the methods of removing perchlorate from soil, groundwater and

drinking water, and meeting CITY's demand for water in light of the contamination.

76. Plaintiffs response costs include the direct and indirect costs of: investigation; installation, operations and maintenance of wellhead treatment facilities; acquisition of safe potable drinking water for its ratepayers; coordination with the California Water Quality Control Board, Santa Ana Region; coordination with the Inland Empire Task Force; coordination with the United States Environmental Protection Agency; water supply emergencies and actions taken in furtherance thereof; keeping the public and relevant government agencies informed of the perchlorate contamination and actions taken to address such contamination; and any costs and fees of attorneys, consultants, and experts.

77. In addition to said investigations and activities, CITY conducted depositions and other discovery in Action No. ED CV 04-79PSG (SSx) of the operations and activities of GOODRICH and named defendants and provided evidence therefrom to the relevant federal and California environmental agencies, the United States Environmental Protection Agency and California Regional Water Quality Control Board – Santa Ana Region. CITY prepared a database of perchlorate and TCE detections, activities and operations, well pumping, water levels in the Rialto-Colton Basin, and other data, and made relevant portions thereof available to the United States Environmental Protection Agency and California Regional Water Quality Control Board – Santa Ana Region, and publicly. CITY pursued in its Fifth Claim in Action No. ED CV 04-79 PSG (SSx), remedies for injunctive relief pursuant to RCRA § 7002(a)(1)(B) for investigation and abatement of the imminent and substantial endangerment to the health of CITY's citizens and ratepayers through the contamination of CITY's water supply, and the environment, including removal action, abatement, and remediation.

78. CITY's efforts directly resulted in the naming of COUNTY to a Cleanup and Abatement Order under the California Water Code for the cleanup

and abatement of contamination on the western portion of the plume, by an amendment to Abatement Order R8-2003-0013 and Order No. R8-2004-0072. Pursuant to said orders, COUNTY has developed of a workplan and implemented a cleanup of substantial portions of the western portion of the plume, which is ongoing to the present time. In June 2008, the anticipation of the potential naming of the source areas to the National Priorities List, and to further settlement efforts, CITY dismissed action No. ED CV 04-79 PSG (SSx) without prejudice pursuant to Section 1 of a Memorandum of Understanding with Defendants. On September 3, 2008, the site was proposed for inclusion on the National Priorities List by the United States Environmental Protection Agency. On September 24, 2009, the United States Environmental Protection Agency named the site, denominated the "B.F. Goodrich Site" to the National Priorities List. Deposition transcripts from action No. ED CV 04-79 PSG (SSx) and the CITY's database were cited by the United States Environmental Protection Agency in the supporting documents at the time of adding the site to the National Priorities List.

79. The United States Environmental Protection Agency is currently engaged in installation and operation of monitoring wells and development on interim remedy, modeling, commencement of a remedial investigation feasibility study, and other activities designed to abate and remediate the contamination on the eastern portion of the plume from sources located within the 160-acre area. The assertion of jurisdiction over the eastern portion of the plume by the United States Environmental Protection Agency is providing, and will in the future provide, substantially the relief sought by CITY with respect to the eastern portion of the plume in the Fifth Claim pursued by CITY in action No. ED CV 04-79 PSG (SSx). CITY is informed and believes and thereon alleges that in the course of implementing remedies and asserting its jurisdiction under CERCLA, the United States Environmental Protection Agency, in addition to general notices previously furnished to GOODRICH, BDI, PYRO, MING, and THOMPSON, may pursue

further notices and/or orders. The CITY has substantially prevailed in obtaining the relief sought with respect to the eastern portion of the plume in the Fifth Claim pursued by CITY in action No. ED CV 04-79 PSG (SSx). In the event that additional notices and/or orders are issued by the United States Environmental Protection Agency that cause the material alteration of the legal relationship of any person or party whether or not named or identified in this Action, CITY shall be entitled to an award of attorneys' fees under RCRA as a substantially prevailing party. CITY shall seek leave to amend this complaint with respect to parties that may be named or subject to orders of the United States Environmental Protection Agency with respect to the eastern portion of the plume as the facts may warrant.

FIRST CLAIM FOR RELIEF

(Recovery of Response Costs and Damages Pursuant to CERCLA § 107(a) - Against DOD, KLI, EMHART, BDI, PYROTRONICS, COUNTY, RRM, BROCO, DENOVA, ENVIRONMENTAL ENTERPRISES, INC., APE, PYRO, TROJAN, ASTRO, ZAMBELLI, RAYTHEON, GENERAL DYNAMICS CORPORATION, HUGHES AIRCRAFT COMPANY, TUNG CHUN COMPANY, MING, WHITTAKER, DELTA T. INC., AMERICAN WEST EXPLOSIVES, GOLDEN STATE EXPLOSIVES, ETI, SCHULZ TRUST DEFENDANTS, ENSIGN-BICKFORD, ORDNANCE ASSOCIATES, PETERS, HESCOX, SKOVGARD, WILKINS, THOMPSON)

80. Plaintiff refers to and realleges paragraphs 1 through 79 of this Complaint and incorporates them herein by this reference.

81. Under this claim for relief, Plaintiff seeks recovery of response costs Plaintiff has incurred or will incur in connection with the contamination which has migrated and continues to migrate from the RASP Area.

82. Defendants, and each of them, are "persons" as defined by § 101(21) of CERCLA, 42 U.S.C. § 9601(21).

83. 42 U.S.C. § 9607(a)(l) imposes liability on any "person" who is the owner or operator of a vessel or a facility for, *inter alia*, all necessary response costs incurred by a person consistent with the NCP.

84. 42 U.S.C. § 9607(a)(2) imposes liability on any "person" who at the time of a disposal of any hazardous substances owned or operated any facility at which such hazardous substances were disposed of for, *inter alia*, all necessary responses costs incurred by a person consistent with the National Contingency Plan.

85. 42 U.S.C. § 9607(a)(3) imposes liability on any "person" who arranges for the disposal of hazardous substances, or arranges with a transporter for transport or disposal of hazardous substances owned or possessed by such persons, for, inter alia, all necessary response costs incurred by a person consistent with the NCP.

86. The RASP Site, and each individual site within the RASP Area where hazardous substances or wastes were disposed of and/or discharged, are, and at all times relevant herein were, a facility or facilities within the meaning of § 101(9) of CERCLA, 42 U.S.C. § 9601(9).

87. The actions of Defendants, and each of them, with regard to the disposal of hazardous substances and wastes, including perchlorate, at the RASP Area, constitute a release or threatened release of hazardous substances at a facility within the meaning of CERCLA § 101(22), 42 U.S.C. § 9601(22).

88. Plaintiff, who is a "person" as defined in CERCLA § 101(21), 42 U.S.C. § 9601(21), has undertaken preliminary investigation and other activities designed to investigate and identify the presence of contamination and identify those persons and entities responsible for said contamination, as well as to characterize and remediate the contamination. Plaintiff has incurred, and will continue to incur, substantial response costs to continue its investigation into the nature and scope and extent of the subsurface contamination affecting, beneath and

in Plaintiffs property and wells caused or contributed to by the Defendants as alleged herein. All such response costs incurred, and that will be incurred, have been and will continue to be necessary and consistent with the NCP.

89. As a direct and proximate result of Defendants' releases or threatened releases of hazardous waste and substances, including perchlorate, at and from the RASP Site, Plaintiff has incurred, and will continue to incur response costs.

90. Pursuant to 42 U.S.C. § 9607(a) the Defendants, and each of them, are strictly, and jointly and severally, liable, or are otherwise liable as provided by applicable law, to Plaintiff for all necessary response costs incurred by Plaintiff in responding to the released hazardous substances and wastes.

91. As a direct and proximate result of Defendants' conduct, Plaintiff is entitled to recover all past, present, and future response costs, together with interest from Defendants, pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a).

SECOND CLAIM FOR RELIEF

(Declaratory Relief re: Future Response Costs Pursuant to CERCLA § 113(g) - Against DOD, KLI, EMHART, BDI, PYROTRONICS, COUNTY, RRM, BROCO, DENOVA, ENVIRONMENTAL ENTERPRISES, INC., APE, PYRO, TROJAN, ASTRO, ZAMBELLI, RAYTHEON, GENERAL DYNAMICS CORPORATION, HUGHES AIRCRAFT COMPANY, TUNG CHUN COMPANY, MING, WHITTAKER, DELTA T. INC., AMERICAN WEST EXPLOSIVES, GOLDEN STATE EXPLOSIVES, ETI, SCHULZ TRUST DEFENDANTS, ENSIGN-BICKFORD, ORDNANCE ASSOCIATES, PETERS, HESCOX, SKOVGARD, WILKINS, THOMPSON)

92. Plaintiff refers to and incorporates by this reference the allegations contained in paragraphs 1 through 91, inclusive, as though fully set forth herein.

93. Pursuant to CERCLA § 113(g)(2), 42 U.S.C. § 9613(g)(2), Plaintiff is entitled to entry of a declaratory judgment declaring (i) that Defendants, and each of them, are jointly and severally liable for Plaintiffs response costs or,

alternatively, are liable for contribution for their equitable allocation thereof (ii) that all relevant actions taken by Plaintiff are consistent with the NCP, and (iii) that Plaintiff has at all times acted reasonably and in good faith and is not liable under CERCLA to any third party or Defendant in any manner, as a result of the disposals and releases of Defendants as alleged herein or, alternatively, has a de minimis or zero equitable allocation or share.

94. Plaintiff further requests that this Court, after entering a declaratory judgment as prayed for herein, retain jurisdiction of this action, pursuant to 28 U.S.C. § 2202, and grant Plaintiff such further relief against Defendants, and each of them, as is necessary and proper to effectuate the Court's declaration.

THIRD CLAIM FOR RELIEF

(Recovery of Response Costs Pursuant to HSAA; Indemnity/Contribution Pursuant to California Health & Safety Code, § 25363(e) - Against KLI, EMHART, BDI, PYROTRONICS, COUNTY, RRM, BROCO, DENOVA, ENVIRONMENTAL ENTERPRISES, INC., APE, PYRO, TROJAN, ASTRO, ZAMBELLI, RAYTHEON, GENERAL DYNAMICS CORPORATION, HUGHES AIRCRAFT COMPANY, TUNG CHUN COMPANY, MING, WHITTAKER, DELTA T. INC., AMERICAN WEST EXPLOSIVES, GOLDEN STATE EXPLOSIVES, ETI, SCHULZ TRUST DEFENDANTS, ENSIGN-BICKFORD, ORDNANCE ASSOCIATES, PETERS, HESCOX, SKOVGARD, WILKINS, THOMPSON)

95. Plaintiff refers to and incorporates by reference the allegations contained in paragraphs 1 through 94, paragraphs 111-146, and paragraphs 155-161 inclusive, as though set forth in full herein.

96. The California Hazardous Substance Account Act ("HSAA"; Cal. Health & Safety Code, § 25300, *et seq.*) provides that any person who has incurred removal or remedial action costs in accordance with HSAA or CERCLA (see Health & Safety Code, § 25315) may seek contribution or indemnity from any person who is liable pursuant to HSAA. Health & Safety Code, § 25363(e).

Defendants herein are "covered persons" under CERCLA (42 U.S.C. § 9607(a)) and are therefore "responsible parties" and "liable persons" under the HSAA. Health & Safety Code, § 25323.5(a). Written notice of commencement of this action has been given to the Director of the Department of Toxic Substances Control in accordance with the HSAA. Health & Safety Code, § 25363(e).

97. All of the contaminants that Defendants disposed of and released onto or in the RASP Area, or at individual facilities therein, or which came to be located at facilities there owned, leased or operated by Defendants or for which Defendants are otherwise responsible and liable under CERCLA and HSAA, constitute substances specifically listed and designated as "hazardous substances" under HSAA (Cal. Health & Safety Code, § 25316), and are hazardous wastes being listed or having the characteristics designating them as hazardous pursuant to 42 U.S.C. §§ 9601(14), and 6921(a), 40 C.F.R. §§ 261.2, 261.3(a) and 302.4(b), and all applicable law. See also *Castaic Lake Water Agency v. Whittaker Corp.* (C.D. Cal. 2003) 272 F.Supp.2d 1053, 1059-60.

98. As a proximate cause of Defendants' actions, omissions and/or status as alleged herein, Plaintiff has incurred necessary response costs, including attorneys' fees, for which Defendants are strictly liable. Health & Safety Code, § 25363. All costs Plaintiff has incurred or will incur to remove and/or remediate the contamination have been in accordance with the HSAA and the NCP. Plaintiff is informed and believes, and based thereon alleges, that the conduct and/or status of Defendants qualifies as actionable under all of the relevant provisions of the HSAA since such conduct and/or status either occurred or existed on or after the HSAA's enactment on January 1, 1982, or was in violation of existing state or federal laws at the time it occurred or existed, or both. Health & Safety Code, § 25366(a).

99. Plaintiff seeks indemnity or alternatively, contribution, as appropriate, from all Defendants for all response costs under California Health and Safety Code

Section 25363, which provides that any person who has incurred removal or remedial action costs may seek contribution or indemnity from any responsible Party.

FOURTH CLAIM FOR RELIEF

(Declaratory Relief Pursuant to HSAA - Cal. Health & Safety Code, § 25300, *et seq.*, § 25363 - Against KLI, EMHART, BDI, PYROTRONICS, COUNTY, RRM, BROCO, DENOVA, ENVIRONMENTAL ENTERPRISES, INC., APE, PYRO, TROJAN, ASTRO, ZAMBELLI, RAYTHEON, GENERAL DYNAMICS CORPORATION, HUGHES AIRCRAFT COMPANY, TUNG CHUN COMPANY, MING, WHITTAKER, DELTA T. INC., AMERICAN WEST EXPLOSIVES, GOLDEN STATE EXPLOSIVES, ETI, SCHULZ TRUST DEFENDANTS, ENSIGN-BICKFORD, ORDNANCE ASSOCIATES, PETERS, HESCOX, SKOVGARD, WILKINS, THOMPSON)

100. Plaintiff refers to and incorporates by reference the allegations contained in paragraphs 1 through 99, inclusive, as though set forth in full herein.

101. Because the extent and magnitude of the contamination at and emanating from the RASP Site, which has migrated and continues to migrate from the RASP Site, is not fully known at this time, and the investigatory, removal, and/or remedial work are ongoing, Plaintiff will continue to incur necessary response costs, including, but not limited to, investigation and removal expenses, attorneys' fees and interest in the future.

102. Pursuant to California Health and Safety Code §§ 25363, Plaintiff is entitled to a declaratory judgment establishing the liability of Defendants for such response costs for purposes of this and any subsequent action or actions to recover further response costs.

FIFTH CLAIM FOR RELIEF

(Injunctive Relief Pursuant to RCRA § 7002(a)(l)(B) -Against COUNTY, RRM, ZAMBELLI, WHITTAKER, SCHULZ TRUST DEFENDANTS - By CITY Only)

103. Plaintiff CITY OF RIALTO refers to and incorporates by reference the allegations contained in paragraphs 1 through 102, inclusive, as though fully set forth herein.

104. Under this claim for relief, Plaintiff CITY OF RIALTO seeks mandatory, preliminary and permanent injunctive relief directing those Defendants who participated in and are responsible for the groundwater contamination affecting, below and in Plaintiffs wells and property, and which is injuring, damaging and destroying natural resources and Plaintiffs proprietary and other interests in the same, and which has migrated from, and continues to migrate from and off, the RASP Site, to undertake the necessary and extensive environmental investigation of the soil and groundwater contamination at and emanating from the RASP Site, and at Plaintiffs property and wells where it has migrated, and continues to migrate from the RASP Site, to analyze the remedial alternatives, and to implement the appropriate remedy to abate and remediate the hazardous environmental contamination.

105. Plaintiff CITY OF RIALTO has given the requisite notices of intent to file suit pursuant to RCRA § 7002(b)(2)(a), 42 U.S.C. § 6972(b)(2)(A), to all relevant Defendants.

106. Each Defendant is a "person" as defined in RCRA § 1004(15), 42 U.S.C. § 6903(15).

107. Defendants' disposal and discharges of hazardous substances and waste, including, without limitation, perchlorate, at the RASP Site, and their failure to abate the resulting subsurface contamination, has caused or contributed to movement of groundwater contamination from the RASP Site through the soils and groundwater and into the subsurface of Plaintiff CITY OF RIALTO's property and wells, as alleged more specifically herein. The contaminated soil at the RASP Site, and the contaminated groundwater underlying and emanating from the RASP Site, has created an imminent and substantial endangerment to health and the

environment, and will continue to present an imminent and substantial endangerment to health and the environment until completely abated. The hazardous substances, including perchlorate, from the RASP Site detected in the groundwater affecting, below and in Plaintiff CITY OF RIALTO's property and wells substantially exceeds levels recognized as safe by the federal and state governments.

108. Plaintiff CITY OF RIALTO has requested that Defendants participate in the performance or financing of the urgently required and extensive response actions at the RASP Site and the contaminated aquifer/s affecting Plaintiff CITY OF RIALTO's property and wells. Such response actions include investigation of the scope and extent of contamination emanating from the RASP Site, a necessary prerequisite to the analysis of remedial alternatives and to the determination, selection, and implementation of the appropriate remedies to abate the endangerment resulting from the contamination emanating from the RASP Site as alleged herein. The Defendants have refused, and continue to refuse, Plaintiff CITY OF RIALTO's request to participate in the environmental investigation in any way, even though the Defendants have caused or contributed to the past and ongoing disposal of solid waste and hazardous waste at the RASP Site which presents an imminent and substantial endangerment to health and the environment.

109. This Court has jurisdiction and authority pursuant to 42 U.S.C. § 6972(a) to order both mandatory preliminary and permanent injunctive relief requiring Defendants to take all action necessary to investigate and abate the imminent and substantial endangerment to health and the environment which affects and exists at, beneath and in Plaintiff CITY OF RIALTO's property and wells from contamination which has migrated and continues to migrate from the RASP Site; such actions, without limitation, include requiring Defendants to undertake a "removal action" to immediately abate the contaminated soils at the RASP Site (so as to eliminate the sources of the contamination of the groundwater

aquifer/s affecting, at and beneath Plaintiff CITY OF RIALTO's property and wells), requiring Defendants to complete the necessary and extensive environmental investigations of the soil and groundwater contamination at the RASP Site, in the contaminated aquifer/s, and at and under Plaintiff CITY OF RIALTO's property and wells which has migrated, and continues to migrate from the RASP Site, requiring Defendants to analyze the remedial alternatives, and requiring Defendants to implement the appropriate remedy to abate and remediate the environmental contamination which has migrated and continues to migrate from the RASP Site.

SIXTH CLAIM FOR RELIEF

(Nuisance - Cal. Civ. Code, § 3479 - Against KLI, EMHART, BDI, PYROTRONICS, COUNTY, RRM, BROCO, DENOVA, ENVIRONMENTAL ENTERPRISES, INC., APE, PYRO, TROJAN, ASTRO, ZAMBELLI, RAYTHEON, GENERAL DYNAMICS CORPORATION, HUGHES AIRCRAFT COMPANY, TUNG CHUN COMPANY, MING, WHITTAKER, DELTA T. INC., AMERICAN WEST EXPLOSIVES, GOLDEN STATE EXPLOSIVES, ETI, SCHULZ TRUST DEFENDANTS, ENSIGN-BICKFORD, ORDNANCE ASSOCIATES, PETERS, HESCOX, SKOVGARD, WILKINS, THOMPSON)

110. Plaintiff refers to and incorporates by this reference the allegations contained in paragraphs 1 through 109, inclusive, as though fully set forth herein.

111. Under this claim for relief, Plaintiff seeks economic, property and related damages Plaintiff has suffered that are proximately caused by the acts and omissions of Defendants resulting in the environmental contamination which has migrated and continues to migrate from the RASP Site, and that are found to be not recoverable or available as response costs under CERCLA, not barred by the provisions of CERCLA, and not to conflict or interfere with the accomplishment and execution of CERCLA's objectives, potentially including, but not limited to, economic and property damages incurred in the form of costs of water

conservation, loss of free use and enjoyment of Plaintiffs property and property rights (including lost recharge and storage capacity), loss of and damage to Plaintiffs proprietary interests in groundwater and groundwater resources, and all other losses to Plaintiffs economic and property rights and interests proximately caused by the contamination which has migrated and continues to migrate from the RASP Site. Plaintiff does not pray for duplicate recovery of response costs available under CERCLA, or to recover items only properly recoverable as response costs as defined by CERCLA that are inconsistent with the NCP, under this claim for relief or any of its other State law tort claims for relief. The rights asserted and damages sought under this claim for relief and all of Plaintiffs other state law tort claims are expressly preserved under CERCLA. 42 U.S.C. §§ 9607(e)(2), 9613(f)(l), 9614(a)-(b), 9652(d); see *Beck v. Atlantic Richfield Co.*, 62 F.3d 1240, 1243 fn. 8 (9th Cir. 1995) ("CERCLA preserves the plaintiffs' right to pursue state law remedies."); *Stanton Road Associates v. Lohrey Enterprises*, 984 F.2d 1015, 1021-1022 (9th Cir. 1993) ("[T]he express language of the statute defeats Lohrey's contention that CERCLA preempts a state law recovery."); *U.S. ex rel Dept. of Fish and Game v. Montrose*, 788 F.Supp. 1485, 1496 (C.D. Cal. 1992) ("[This] Court holds as a matter of law that CERCLA is not an exclusive remedy, and that Defendants are entitled to bring counterclaims based on *both* CERCLA and tort law."); *City of Merced v. Fields*, 997 F.Supp. 1376, 1336 (E.D. Cal. 1998).

112. Plaintiff is informed and believes, and based thereon alleges, that at all times during Defendants' ownership and operation or possession of the relevant facilities at the RASP Site, Defendants used said facilities and the surrounding property in violation of the law, and public and private safety, by improperly releasing, discharging, handling and disposing of hazardous substances and wastes at and around the RASP Site as alleged herein, resulting in soil and groundwater

contamination that has migrated from the RASP Site and now exists in the contaminated aquifer/s affecting and underlying Plaintiffs property and wells.

113. Plaintiff is informed and believes, and based thereon alleges, that at the time Defendants owned, possessed and/or operated the facilities at the RASP Site, said Defendants knew or should have known that hazardous substances, including perchlorate, were present in the soil and groundwater underlying the RASP Site as the result of the tortious and unlawful releases and disposal of solid and liquid waste which occurred at the RASP Site facilities; however, said Defendants knowingly, tortiously and unlawfully failed to abate the continuing nuisance and failed to prevent the migration of such contamination from the RASP Site into the groundwater aquifer/s affecting and onto, beneath and into Plaintiffs property and wells.

114. The existence of contamination in the groundwater aquifer/s affecting and underlying Plaintiffs property and wells caused by the tortious and unlawful disposals and releases of hazardous substances as alleged herein, and said Defendants' failure to abate the continuing nuisance and prevent its migration onto, beneath and into Plaintiffs property and wells as alleged herein, constitutes a nuisance as provided by and within the meaning of California statutory law, and specifically California Civil Code § 3479, as it has, inter alia, substantially interfered with and obstructed Plaintiffs free use and enjoyment of Plaintiffs property and proprietary and other rights and interests. California Civil Code § 3479 provides in pertinent part:

> Anything which is injurious to health … or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin…is a nuisance.

Plaintiff also has special statutory authority to bring a civil action to abate a nuisance under California statutory law. See Cal. Code Civ. Proc., § 731; Cal. Civ. Code § 3494; *City and County of San Francisco v. Buckman,* 111 Cal. 25, 30-31 (1896); *City of Turlock v. Bristow,* 103 Cal.App. 750, 755 (1930); *Perepletchikoff v. City of Los Angeles,* 174 Cal.App.2d 697, 699 (1959). The aforesaid nuisance is continuing for purposes of California's statute of limitations because it is abatable and/or because the groundwater contamination herein at issue continues to migrate, move, and spread onto, into and across the subsurface of Plaintiffs property and wells, and through one or more contaminated aquifers, and its impact has thus varied, and continues to vary, over time. *Mangini v. Aerojet-General Corp.*, 12 Cal.4th 1087, 1093 (1996); *Field-Escandon v. DeMann,* 204 Cal.App.3d 228, 234 (1998); *Beck Development Co. v. Southern Pacific Transportation Co.,* 44 Cal.App.4th 1160, 1218 (1996) ("contamination may be shown to be a continuing nuisance by evidence that the contaminants continue to migrate through land and groundwater causing new and additional damage on a continuous basis."); *Newhall Land & Farming Co. v. Superior Court,* 19 Cal.App.4th 334, 341 (1993); *Capogeannis v. Superior Court,* 12 Cal.App.4th 668, 673, 681 (1993); *Arcade Water Dist. v. U.S.*, 940 F.2d 1265, 1268 (9th Cir. 1991) ("In determining under California law whether the nuisance is continuing, the most salient allegation is that contamination continues to leach into [the well].").

115. Defendants, and each of them named to this cause of action, have threatened to, and will, unless restrained by this Court, continue to maintain the nuisance by failing to investigate, remove, and remediate the environmental contamination which has migrated and continues to migrate from the RASP Site, and each and every failure to act has been, and will be, without the consent, against the will, and in violation of the rights of Plaintiff.

116. Unless Defendants, and each of them named to this cause of action, are restrained by order of this Court from continuing their non-responsive course

of conduct by failing to abate the contamination which has migrated and continues to migrate from the RASP Site, it will be necessary for Plaintiff to commence many successive actions against Defendants, and each of them, to secure compensation for damages sustained, thus requiring a multiplicity of suits.

117. Unless Defendants, and each of them named to this cause of action, are enjoined from continuing their non-responsive course of conduct by failing to abate the contamination which has migrated and continues to migrate from the RASP Site, Plaintiff will suffer irreparable injury in that the usefulness and economic value of Plaintiffs property (including its water), wells and proprietary and other interests and water rights will be substantially diminished, to its own and its citizens' detriment.

118. As a proximate result of the nuisance created by the Defendants, and each of them named to this cause of action, Plaintiff has incurred, and will continue to incur, damages and costs as alleged herein.

119. Further, Defendants named to this cause of action are liable to the extent provided by California law, as preserved by CERCLA as hereinabove alleged, for all consequential damages and costs arising from their creation of and failure to abate the continuing nuisance, including, but not limited to, damages Plaintiff has incurred from the loss of free use and enjoyment of Plaintiffs property and proprietary and other rights and interests, and costs of water conservation programs.

120. Plaintiff is informed and believes, and based thereon alleges in accordance with the relevant requirements governing sufficiency of pleadings in this Court, *Bureerong v. Uvawas,* 922 F.Supp. 1450, 1480-1481 (C.D. Cal. 1996); *Pease & Curren Refining, Inc. v. Spectrolab, Inc.,* 744 F.Supp. 945, 948 (C.D. Cal. 1990), abrogated on other grounds, 984 F.2d 1015 (9th Cir. 1993), that in creating and failing to abate the nuisance, Defendants named in this cause of action have acted with full knowledge of the consequences and damages caused to Plaintiff and

others and that their conduct is willful, oppressive and malicious and, accordingly, Plaintiff is entitled to punitive damages (except as to Defendant COUNTY).

SEVENTH CLAIM FOR RELIEF

(Public Nuisance - Cal. Civ. Code §§ 3479, 3480 - Against KLI, EMHART, BDI, PYROTRONICS, COUNTY, RRM, BROCO, DENOVA, ENVIRONMENTAL ENTERPRISES, INC., APE, PYRO, TROJAN, ASTRO, ZAMBELLI, RAYTHEON, GENERAL DYNAMICS CORPORATION, HUGHES AIRCRAFT COMPANY, TUNG CHUN COMPANY, MING, WHITTAKER, DELTA T. INC., AMERICAN WEST EXPLOSIVES, GOLDEN STATE EXPLOSIVES, ETI, SCHULZ TRUST DEFENDANTS, ENSIGN-BICKFORD, ORDNANCE ASSOCIATES, PETERS, HESCOX, SKOVGARD, WILKINS, THOMPSON)

121. Plaintiff refers to and incorporates by this reference, the allegations contained in paragraphs 1 through 120, inclusive, as though fully set forth herein.

122. Under this claim for relief, Plaintiff seeks economic, property and related damages Plaintiff has suffered that are proximately caused by the acts and omissions of Defendants resulting in the environmental contamination which has migrated and continues to migrate from the RASP Site, and that are found to be not recoverable or available as response costs under CERCLA, not barred by the provisions of CERCLA, and not to conflict or interfere with the accomplishment and execution of CERCLA's objectives, potentially including, but not limited to, economic and property damages incurred in the form of costs of water conservation programs, loss of free use and enjoyment of CITY's property and property rights (including lost recharge and storage capacity), loss of and damage to CITY's proprietary interests in groundwater and groundwater resources, and all other losses to CITY's economic and property rights and interests proximately caused by the contamination which has migrated and continues to migrate from the RASP Site. Plaintiff does not pray for duplicate recovery of response costs available under CERCLA, or to recover items only properly recoverable as

response costs as defined by CERCLA that are inconsistent with the NCP, under this claim for relief or any of its other State law tort claims for relief. The rights approved and damages sought under this claim for relief and all of Plaintiff's other state law tort claims are expressly preserved under CERCLA. 42 U.S.C. §§ 9607(e)(2), 9613(f)(l), 9614(a)-(b), 9652(d); see *Beck v. Atlantic Richfield Co.*, 62 F.3d 1240, 1243 fn. 8 (9th Cir. 1995) ("CERCLA preserves the plaintiffs' right to pursue state law remedies."); *Stanton Road Associates v. Lohrey Enterprises,* 984 F.2d 1015, 1021-1022 (9th Cir. 1993) ("[T]he express language of the statute defeats Lohrey's contention that CERCLA preempts a state law recovery."); *U.S. ex rel Dept. of Fish and Game v. Montrose,* 788 F.Supp. 1485, 1496 (C.D. Cal. 1992) ("[This] Court holds as a matter of law that CERCLA is not an exclusive remedy, and that Defendants are entitled to bring counterclaims based on *both* CERCLA and tort law."); *City of Merced v. Fields,* 997 F.Supp. 1376, 1336 (E.D. Cal. 1998).

123. By causing or contributing to the disposal of hazardous substances, including perchlorate, at the RASP Site in a manner which allowed them to be released into the environment, Defendants are liable for causing, creating, maintaining, contributing to and/or failing to abate a public nuisance as provided for and specifically defined by California statutory law, see California Civil Code §§ 3479 and 3480, in that the releases of hazardous substances caused and contributed to by Defendants as alleged herein have created a condition which is, inter alia, injurious to health, or is indecent or offensive to the senses, adversely affects at the same time an entire community or neighborhood, and/or considerable number of persons, and constitutes an obstruction to the free use of Plaintiff's property and proprietary and other interests, which interferes with Plaintiff's comfortable enjoyment of its property, and proprietary and other interests. Plaintiff has special statutory authority to bring a civil action to abate a nuisance

under California statutory law. E.g., Cal. Code Civ. Proc. § 731; Cal. Civ. Code § 3494; see also Cal. Civ. Code. §§ 3490-3495.

124. The condition of public nuisance below the RASP Site, and in the one or more contaminated aquifers underlying that site and Plaintiffs property and wells, affects the entire community, including a considerable number of persons reliant upon Plaintiffs public works agency for their drinking water supply, in that the hazardous substances have extensively contaminated the groundwater in a major and critically important aquifer/s in which Plaintiff and other water purveyors have proprietary and other interests, including groundwater extraction, usage, supply, storage and recharge interests and rights. The hazardous substances have migrated, and are continuing to migrate, through and into the environment and are continuing to damage the groundwater resources of the State of California, and Plaintiff's proprietary interests and rights in the same, thereby depriving the public of the rights and benefits of free and full beneficial uses of the contaminated groundwater aquifer/s. The impact of such groundwater contamination varies, and will continue to vary, over time, as heretofore alleged.

125. At the same time, the nuisance has caused special injury to Plaintiff in that the Defendants' releases of hazardous substances as alleged herein have caused or contributed to the soil and groundwater contamination which underlies and adversely affects Plaintiff's property rights and interests, including those in wells that are a primary source of Plaintiff's municipal water supply, and its recharge and storage rights and interests. As a result, Plaintiff has incurred, and will continue to incur, damages as heretofore alleged. In addition, because of the condition of nuisance created and contributed to by Defendants, the resources of Plaintiff have been diverted and Plaintiff has suffered diminution in its assets and the value of its property and interests, and lost opportunity with respect to the free use and enjoyment of its property and interests.

126. Defendants are strictly, jointly, and severally liable for abatement of the endangerment to the environment and resulting interference with the public's free use and enjoyment of public property and drinking water supply, *inter alia*, caused by the contamination which has migrated and continues to migrate from the RASP Site.

127. Further, Defendants are strictly, jointly, and severally liable for damages arising from the interference with the public's free use and enjoyment of public property, and the interference with Plaintiffs free use and enjoyment of its property and proprietary and other interests in natural groundwater resources, caused by the contamination which has migrated and continues to migrate from the RASP Site.

128. Plaintiff has given notice to Defendants, and each of them, of the obstruction and endangerment caused by the public nuisance, and requested its abatement, but Defendants, and each of them, have failed or refused, and continue to fail or refuse, to take timely and proper action to abate the nuisance caused by contamination which has migrated and continues to migrate from the RASP Site and/or to compensate Plaintiff for damages suffered from the contamination which has migrated and continues to migrate from the RASP Site.

EIGHTH CLAIM FOR RELIEF

(Negligence - Cal. Civ. Code §§ 1708, 1714 - Against KLI, EMHART, BDI, PYROTRONICS, COUNTY, RRM, BROCO, DENOVA, ENVIRONMENTAL ENTERPRISES, INC., APE, PYRO, TROJAN, ASTRO, ZAMBELLI, RAYTHEON, GENERAL DYNAMICS CORPORATION, HUGHES AIRCRAFT COMPANY, TUNG CHUN COMPANY, MING, WHITTAKER, DELTA T. INC., AMERICAN WEST EXPLOSIVES, GOLDEN STATE EXPLOSIVES, ETI, SCHULZ TRUST DEFENDANTS, ENSIGN-BICKFORD, ORDNANCE ASSOCIATES, PETERS, HESCOX, SKOVGARD, WILKINS, THOMPSON)

129. Plaintiff refers to and incorporates by this reference the allegations contained in paragraphs 1 through 128, inclusive, as though fully set forth herein.

130. Under this claim for relief, Plaintiff seeks damages for injuries Plaintiff has suffered to its property and economic interests, including water conservation programs, diminution in value of its property and proprietary and other interests, including loss of recharge and storage capacity rights and interests, and the loss of free use and enjoyment of its property and proprietary interests, all as heretofore alleged, caused by the contamination which has migrated, and continues to migrate, from the RASP Site.

131. Under California Civil Code §§ 1708 and 1714, the Defendants named in this claim (except COUNTY), had a duty to exercise ordinary care and skill in the ownership, management, use and control of their properties and facilities and products and wastes, specifically with regard to the generation, release, discharge and disposal of hazardous substances and wastes at the RASP Site and its constituent facilities. Civil Code § 1708 states: "Every person is bound, without contract, to abstain from injury the person or property of another, or infringing on any of his or her rights." Civil Code § 1714(a) provides in pertinent part:

> Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself.

Civ. Code, § 1714(a).

132. As to defendant COUNTY, Govt. Code § 835 provides:

> Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time

> of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and either:
> (a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or
> (b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

(Govt. Code § 835(a), (b); *see also Behr v. County of Santa Cruz,* 172 Cal.App.2d 697, 711-712 (1959) ("dangerous condition" liability of public entity is a form of negligence); *U.S. Ex Rel. Dept. of Fish and Game v. Montrose,* 788 F.Supp. 1485, 1494 (C.D. Cal. 1992). The CITY has alleged in this Complaint, generally and in the allegations incorporated herein, that the COUNTY's Mid-Valley Sanitary Landfill is currently in a dangerous condition and has been in that condition since approximately 1958 in that it is contaminated with toxic wastes and substances, including perchlorate; that COUNTY actively accepted for disposal in unlined earthen areas of the landfill perchlorate-containing and other hazardous substances and wastes from others from approximately 1958 to present; and that the hazardous wastes and substances, including but not limited to perchlorate, leaked out of the unlined landfill where COUNTY permitted their disposal and are now migrating and contaminating various aquifers and CITY's wells. *See Bonanno v. Central Contra Costa Transit Auth.,* 30 Cal.4th 139, 149-151 (2003) (liability lies under § 835 where dangerous conditions on public agency's property cause damage to adjacent property not owned by agency). COUNTY's actions in constructing and operating an unlined landfill actively accepting hazardous wastes are negligent actions that constitute and have caused defective and dangerous property

conditions attributable to COUNTY. COUNTY had actual and constructive notice of the dangerous condition of the COUNTY's Mid-Valley Sanitary Landfill under Govt. Code § 835.2 a sufficient time prior to the injury caused by the leaking of hazardous wastes and substances, including but not limited to perchlorate, from the Mid-Valley Sanitary Landfill, to have taken measures to protect Plaintiff's aquifer and wells against said dangerous condition.

133. Plaintiff is informed and believes, and based thereon alleges, that Defendants negligently and improperly managed and controlled their properties and facilities and negligently and improperly disposed of hazardous substances and wastes, including perchlorate, onto and beneath the soil at the RASP Site by burial, open burning, discharge into unlined pits and ponds, exposure to the environment, and disposal at Defendant COUNTY's unlined Mid-Valley Sanitary Landfill, inter alia, and failed to take any measures to prevent the migration of the hazardous substances and waste thus disposed of at the RASP Site from moving vertically downward and through and contaminating the soils and groundwater in the beneficial use aquifer/s at and beneath the RASP Site, and migrating to, beneath and into Plaintiffs property and wells.

134. Defendants had a duty to exercise ordinary care and skill in the ownership, management, use and control of the RASP Site, and their facilities, specifically with regard to the generation and disposal of hazardous substances and wastes at the RASP Site.

135. Plaintiff is informed and believes, and based thereon alleges, that Defendants negligently and improperly managed and controlled the RASP Site and constituent facilities and negligently and improperly disposed of hazardous substances and wastes, including perchlorate, onto and beneath the RASP Site, and failed to abate and prevent the migration of the hazardous substances and wastes disposed of at the RASP Site from contaminating the soils and groundwater at and

beneath the RASP Site, and migrating under, onto and into Plaintiffs property and wells.

136. Plaintiff is informed and believes, and based thereon alleges, that the conduct, acts and omissions of Defendants alleged hereinabove were also, at the time they were committed, in violation of federal, state and/or local laws, and/or in violation of Defendants' own relevant operations, cleanup, safety and/or disposal procedures, and/or so palpably opposed to the dictates of common prudence, that no careful person would have been guilty of such conduct, acts or omissions, such that Defendants' conduct constitutes negligence per se. For example, and without limitation, Defendants' actions and omissions as alleged herein violated: (1) the beneficial water use provisions of Article 10, Section 2 of the California Constitution by constituting waste and unreasonable use; (2) California Health & Safety Code §§ 5411, which prohibits the discharge of waste causing contamination, pollution or a nuisance; and (3) Water Code, §§ 13304 and 13350(b)(l), which prohibit the discharge of hazardous substances into state waters so as to cause pollution or a nuisance.

137. As a proximate result of the negligence and negligence per se of Defendants, including the constitutional and statutory violations set forth above, Plaintiff has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

NINTH CLAIM FOR RELIEF

(Continuing Trespass to Land - Against KLI, EMHART, BDI, PYROTRONICS, RRM, BROCO, DENOVA, ENVIRONMENTAL ENTERPRISES, INC., APE, PYRO, TROJAN, ASTRO, ZAMBELLI, RAYTHEON, GENERAL DYNAMICS CORPORATION, HUGHES AIRCRAFT COMPANY, TUNG CHUN COMPANY, MING, WHITTAKER, DELTA T. INC., AMERICAN WEST EXPLOSIVES, GOLDEN STATE EXPLOSIVES, ETI, SCHULZ TRUST

DEFENDANTS, ENSIGN-BICKFORD, ORDNANCE ASSOCIATES, PETERS, HESCOX, SKOVGARD, WILKINS, THOMPSON)

138. Plaintiff refers to and incorporates by this reference the allegations contained in paragraphs 1 through 137, inclusive, as though fully set forth herein.

139. Under this claim for relief, Plaintiff seeks economic, property and related damages Plaintiff has suffered that are proximately caused by the acts and omissions of Defendants resulting in the environmental contamination which has migrated and continues to migrate from the RASP Site, and that are found to be not recoverable or available as response costs under CERCLA, not barred by the provisions of CERCLA, and not to conflict or interfere with the accomplishment and execution of CERCLA's objectives, potentially including, but not limited to, economic and property damages incurred in the form of costs of water conservation programs, loss of free use and enjoyment of Plaintiff's property and property rights (including lost recharge and storage capacity), loss of and damage to Plaintiff's proprietary interests in groundwater and groundwater resources, and all other losses to Plaintiff's economic and property rights and interests proximately caused by the contamination which has migrated and continues to migrate from the RASP Site. Plaintiff does not pray for duplicate recovery of response costs available under CERCLA, or to recover items only properly recoverable as response costs as defined by CERCLA that are inconsistent with the NCP, under this claim for relief or any of its other State law tort claims for relief. The rights approved and damages sought under this claim for relief and all of Plaintiff's other state law tort claims are expressly preserved under CERCLA. 42 U.S.C. §§ 9607(e)(2), 9613(f)(1), 9614(a)-(b), 9652(d); see *Beck v. Atlantic Richfield Co.,* 62 F.3d 1240, 1243 fn. 8 (9th Cir. 1995) ("CERCLA preserves the plaintiffs' right to pursue state law remedies."); *Stanton Road Associates v. Lohrey Enterprises*, 984 F.2d 1015, 1021-1022 (9th Cir. 1993) ("[T]he express language of the statute defeats Lohrey's contention that CERCLA preempts a state law

recovery."); *U.S. ex rel Dept. of Fish and Game v. Montrose*, 788 F.Supp. 1485, 1496 (C.D. Cal. 1992) ("[This] Court holds as a matter of law that CERCLA is not an exclusive remedy, and that Defendants are entitled to bring counterclaims based on *both* CERCLA and tort law."); *City of Merced v. Fields,* 997 F.Supp. 1376, 1336 (E.D. Cal. 1998).

140. The existence of contamination in the groundwater in and underlying Plaintiffs property and wells caused by the tortious and unlawful disposals and releases of hazardous substances and wastes as alleged herein, and by said Defendants' failure to abate the continuing trespass, and prevent its migration onto, under and into Plaintiff's property and wells as alleged herein, constitutes a trespass which has interfered with Plaintiff's use and enjoyment of its property and proprietary and other interests, which trespass is continuing because it is abatable and/or because the groundwater contamination herein at issue continues to migrate, move, and spread onto, under, into and across the subsurface of the contaminated aquifer/s, and Plaintiff's property and wells, and its impact has thus varied, and continues to vary, over time, as heretofore alleged. Plaintiff's trespass claim is grounded in well-established California statutory law, as evidenced by numerous statutes recognizing a real property owner's rights to sue for and obtain damages for trespass. E.g., Cal. Civ. Code §§ 821, 826, 1708, 3281, 3282, 3283, 3333, 3334; Code Civ. Proc. § 338(b); *see Bonnano, supra,* 30 Cal.4th at 149-151; *Montrose, supra,* 788 F.Supp. at 1494.

141. Defendants, and each of them, have threatened to, and will, unless restrained by this Court, continue to maintain the trespass by failing to investigate, remove, and remediate the environmental contamination which has migrated and continues to migrate from the RASP Site, and each and every such failure to act has been, and will be, without the consent, against the will, and in violation of the rights of Plaintiff.

142. Unless Defendants, and each of them, are restrained by order of this Court from continuing their non-responsive course of conduct in failing to abate the contamination which has migrated and continues to migrate from the RASP Site, it will be necessary for Plaintiff to commence many successive actions against Defendants, and each of them, to secure compensation for damages sustained, thus requiring a multiplicity of suits.

143. Unless Defendants, and each of them, are enjoined from continuing their non-responsive course of conduct in failing to abate the contamination which has migrated and continues to migrate from the RASP Site, Plaintiff will suffer irreparable injury in that the usefulness and economic value of Plaintiff's property and proprietary and other interests will be substantially diminished.

144. As a proximate result of the trespass created by the Defendants, and each of them, Plaintiff has incurred, and will continue to incur, damages and costs as heretofore alleged.

145. Further, Defendants are liable to the extent provided by California law, as preserved by CERCLA as hereinabove alleged, for all consequential damages and costs arising from their creation of and failure to abate the continuing trespass, including, but not limited to, the loss of free use and enjoyment of Plaintiff's property.

146. Plaintiff is informed and believes, and based thereon alleges in accordance with the relevant requirements governing sufficiency of pleadings in this Court, *Bureerorzg v. Uvawas,* 922 F.Supp. 1450, 1480-1481 (C.D. Cal. 1996); *Pease & Curren Refining, Inc. v. Spectrolab, Inc.,* 744 F.Supp. 945, 948 (C.D. Cal. 1990), abrogated on other grounds, 984 F.2d 1015 (9th Cir. 1993), that in creating and failing to abate the continuing trespass, Defendants have acted with full knowledge of the consequences and damages caused to Plaintiff, and that their conduct is willful, oppressive and malicious and, accordingly, Plaintiff is entitled to punitive damages.

TENTH CLAIM FOR RELIEF

(Inverse Condemnation - Cal. Const., Art I, § 19 – Against Defendant COUNTY Only)

147. Plaintiff refers to and incorporates by this reference the allegations contained in paragraphs 1 through 146, inclusive, as though fully set forth herein.

148. Plaintiff is informed and believes, and based thereon alleges, that defendant COUNTY is, and at all relevant times was, a governmental public entity possessing the power of eminent domain under the laws of the State of California.

149. As a direct and necessary result of the plan, design, maintenance and operation of the unlined Mid-Valley Sanitary Landfill owned and operated by Defendant COUNTY, as previously alleged in more detail, Plaintiff has been and is compelled to suffer a harmful physical invasion of perchlorate contamination over, onto, under and into its real property, wells, proprietary and related property interests in contaminated aquifer/s and its/their groundwater resources, which physical invasion has substantially interfered with and damaged Plaintiff's rights to use, develop, occupy and transfer its property and proprietary rights in the contaminated aquifer/s and its/their groundwater resources. The operation of the Mid-Valley Sanitary Landfill in this manner and the resulting physical invasion and damages from the perchlorate contamination plume has also entrenched on and interfered with Plaintiff's reasonable investment-backed expectations and has created a direct, peculiar and substantial burden on Plaintiff's property and property rights and interests rendering them less valuable, taken and/or damaged as a result of COUNTY's operations.

150. The above-described damages to Plaintiff's property and property rights were proximately caused by Defendant COUNTY's actions in that the Mid-Valley Sanitary Landfill is a substantial source of and contributor to the perchlorate plume that has polluted the contaminated aquifer/s and physically

invaded, occupied and damaged Plaintiff's property and property rights and interests.

151. As a result of the above-described taking and damaging of Plaintiff's property, Plaintiff's damages include, but are not limited to, diminution in value of Plaintiff's property and property lights; cost of well head and other treatment facilities and replacement water; and costs of monitoring, investigation and expert consultants, as heretofore alleged.

152. Plaintiff has received no compensation from Defendant COUNTY for the above-described taking of and damages to its property and property rights and interests, nor has Plaintiff consented to the above-described physical invasion of perchlorate plume contamination or Defendant COUNTY's operation and use of the Mid-Valley Sanitary Landfill Facility in a manner causing and allowing such damages.

153. Plaintiff has incurred and will incur attorneys', appraisal, engineering, hydrogeology, and other expert fees because of this proceeding, in amounts that cannot yet be ascertained, which are recoverable in this action under the provisions of California C.C.P. § 1036 and all applicable law.

ELEVENTH CLAIM FOR RELIEF

(Declaratory Relief Pursuant to the Declaratory Judgment Act (28 U.S.C. §§ 2201, 2202) - Against DOD, KLI, EMHART, BDI, PYROTRONICS, COUNTY, RRM, BROCO, DENOVA, ENVIRONMENTAL ENTERPRISES, INC., APE, PYRO, TROJAN, ASTRO, ZAMBELLI, RAYTHEON, GENERAL DYNAMICS CORPORATION, HUGHES AIRCRAFT COMPANY, TUNG CHUN COMPANY, MING, WHITTAKER, DELTA T. INC., AMERICAN WEST EXPLOSIVES, GOLDEN STATE EXPLOSIVES, ETI, SCHULZ TRUST DEFENDANTS, ENSIGN-BICKFORD, ORDNANCE ASSOCIATES, PETERS, HESCOX, SKOVGARD, WILKINS, THOMPSON)

154. Plaintiff refers to and incorporates by this reference the allegations contained in paragraphs 1 through 146, inclusive, as though fully set forth herein.

155. Under this claim for relief, Plaintiff seeks declaratory relief under federal law to determine the respective legal rights and obligations of the parties to this action.

156. The CITY seeks herein, *inter alia,* remediation by defendants of hazardous substances, including perchlorate, from the Rialto-Colton Groundwater Basin, and a declaration of the rights and obligations of the parties hereto.

157. Plaintiff is informed and believes, and based thereon alleges, that all legal liability, whether arising from federal or state statutory law, or from the common law, which may in the future be asserted by any individual or entity, public or private, arising from or related to the contamination of and at Plaintiff's property and wells, as alleged herein, is the sole and actual responsibility of the Defendants. Therefore, Plaintiff is entitled to a judicial declaration that Defendants, are liable to indemnify Plaintiff for all future damages and costs that may be suffered by Plaintiff as a result of the contamination of Plaintiff's property and proprietary and other interests as alleged herein, or, in the alternative, that Defendants, are liable to contribute to and reimburse Plaintiff for such damages and costs including, without limitation, costs or damages awarded in legal or administrative actions, costs of compliance with any judicial or administrative order, and costs of litigation including attorneys' fees.

TWELFTH CLAIM FOR RELIEF

(Declaratory Relief Under State Law (Cal. Code Civ. Proc., § 1060) - Against KLI, EMHART, BDI, PYROTRONICS, COUNTY, RRM, BROCO, DENOVA, ENVIRONMENTAL ENTERPRISES, INC., APE, PYRO, TROJAN, ASTRO, ZAMBELLI, RAYTHEON, GENERAL DYNAMICS CORPORATION, HUGHES AIRCRAFT COMPANY, TUNG CHUN COMPANY, MING, WHITTAKER, DELTA T. INC., AMERICAN WEST EXPLOSIVES, GOLDEN

STATE EXPLOSIVES, ETI, SCHULZ TRUST DEFENDANTS, ENSIGN-BICKFORD, ORDNANCE ASSOCIATES, PETERS, HESCOX, SKOVGARD, WILKINS, THOMPSON)

158. Plaintiff refers to and incorporates by this reference the allegations contained in paragraphs 1 through 146, and paragraphs 154-157, inclusive, as though fully set forth herein.

159. Under this claim for relief, Plaintiff seeks declaratory relief under state law to determine the respective legal rights and obligations of the parties to this action.

160. The CITY seeks herein, *inter alia*, remediation by defendants of hazardous substances, including perchlorate, from the Rialto-Colton Groundwater Basin, and a declaration of the rights and obligations of the parties hereto.

161. Plaintiff is informed and believes, and based thereon alleges, that all legal liability, whether arising from federal or state statutory law, or from the common law, which may in the future be asserted by any individual or entity, public or private, arising from or related to the contamination of and at Plaintiff's property and wells, as alleged herein, is the sole and actual responsibility of the Defendants. Therefore, Plaintiff is entitled to a judicial declaration that Defendants are liable to indemnify Plaintiff for all future damages and costs that may be suffered by Plaintiff as a result of the contamination of Plaintiff's property and proprietary interests as alleged herein, or, in the alternative, that Defendants, are liable to contribute to and reimburse Plaintiff for such damages and costs including, without limitation, costs or damages awarded in legal or administrative actions, costs of compliance with any judicial or administrative order, and costs of litigation including attorneys' fees.

WHEREFORE, PLAINTIFF prays for judgment against Defendants and each of them as follows.

AS TO THE FIRST THROUGH FOURTH CLAIMS FOR RELIEF AGAINST DEFENDANTS AS NAMED ABOVE IN EACH CLAIM FOR RELIEF:

(1) For recovery from Defendants of the necessary response costs incurred by Plaintiff in response to the release and threatened release of hazardous substances from and at the RASP Site as alleged herein in an amount subject to proof under CERCLA, HSAA, and all applicable law;

(2) For recovery from Defendants of contribution under HSAA for past and future recovery response costs as alleged herein in an amount subject to proof;

(3) For a declaration of this Court that Defendants are solely liable for all future response costs incurred by Plaintiff necessary to respond to the release and threatened release of hazardous substances on and from the RASP Site, and for contribution under HSAA, and all applicable law as alleged herein;

(4) For retention of jurisdiction of this action by this Court after entry of the requested declaratory judgment for the granting to Plaintiffs City of Rialto and Rialto Utility Authority, of such further relief against Defendants as may be necessary or proper to effectuate the declaration of this Court;

(5) For injunctive relief under all applicable law directing Defendants to investigate, characterize and abate and remediate the environmental contamination resulting from their release of hazardous substances on and from the RASP Site;

(6) For costs of suit;

(7) For attorneys' fees in accordance with law; and

(8) For such other and further relief as the Court deems just and proper.

AS TO THE FIFTH CLAIM FOR RELIEF AGAINST DEFENDANTS AS NAMED ABOVE IN SAID CLAIM FOR RELIEF:

(1) For mandatory, preliminary, and permanent injunctive relief requiring Defendants, and each of them, to take all action that is necessary to investigate and abate the imminent and substantial endangerment to health and the environment

which exists in the contaminated aquifer/s and at and below Plaintiff's property and wells from contamination which has migrated and continues to migrate from the RASP Site, including conducting a "removal action" to immediately abate the contaminated soil at the RASP Site (so as to eliminate a source of the contamination at Plaintiff's property); requiring Defendants to complete the necessary and extensive environmental investigations of the soil and groundwater contamination at the RASP Site, the contaminated aquifer/s and at Plaintiff's property which has migrated, and continues to migrate, from the RASP Site; and requiring Defendants to analyze the remedial alternatives and to implement the appropriate remedy consistent with the NCP to abate and remediate the environmental contamination which has migrated and continues to migrate from the RASP Site;

(2) For costs of suit incurred herein;

(3) For attorneys' fees; and,

(4) For such other and further relief as the Court may deem just and proper.

AS TO THE SIXTH, SEVENTH, AND NINTH CLAIMS FOR RELIEF AGAINST DEFENDANTS AS NAMED ABOVE IN EACH CLAIM FOR RELIEF:

(1) For general damages consistent with CERCLA and California law in an amount to be determined at trial caused by the contamination which has migrated and continues to migrate from the RASP Site as alleged herein;

(2) For special damages consistent with CERCLA and California law in an amount to be determined at trial caused by the contamination which has migrated and continues to migrate from the RASP Site as alleged herein;

(3) For punitive damages (except as against Defendant COUNTY) in an amount to be determined at trial due to said Defendants' conduct and actions in

connection with the contamination which has migrated and continues to migrate from the RASP Site as alleged herein;

(4) For such other and further relief as the Court may deem just and proper.

AS TO THE EIGHTH CLAIM FOR RELIEF AGAINST ALL DEFENDANTS EXCEPT DOD:

(1) For general damages consistent with CERCLA and California law in an amount to be determined at trial caused by the contamination which has migrated and continues to migrate from the RASP Site as alleged herein;

(2) For special damages consistent with CERCLA and California law in an amount to be determined at trial caused by the contamination which has migrated and continues to migrate from the RASP Site as alleged herein;

(3) For costs of suit incurred herein; and

(4) For such other and further relief as the Court may deem just and proper.

AS TO THE TENTH CLAIM FOR RELIEF AGAINST COUNTY ONLY:

(1) For damages against Defendant COUNTY for inverse condemnation of Plaintiff's property and property rights in an amount to be determined at the time of trial with interest thereon at the legal rate from the date of the damages;

(2) For reasonable attorneys', appraisal, engineering, hydrogeology and other expert fees according to proof;

(3) For costs of suit incurred herein; and

(4) For such other and further relief as the Court may deem just and proper.

AS TO THE ELEVENTH AND TWELFTH CLAIMS FOR RELIEF AGAINST DEFENDANTS AS NAMED ABOVE IN EACH CLAIM FOR RELIEF:

(1) For declaratory relief and judgment determining the respective legal rights and obligations of all the parties to this action;

(2) For costs of suit incurred herein; and

(3) For such other and further relief as the Court may deem just and proper.

Plaintiff demands a jury trial in this matter pursuant to F.R.C.P. 38, and all applicable law.

Dated: October 15, 2009

PILLSBURY WINTHROP SHAW PITTMAN LLP

By: _____ FOR
SCOTT A. SOMMER
Attorneys for Plaintiffs
CITY OF RIALTO and RIALTO UTILITY AUTHORITY